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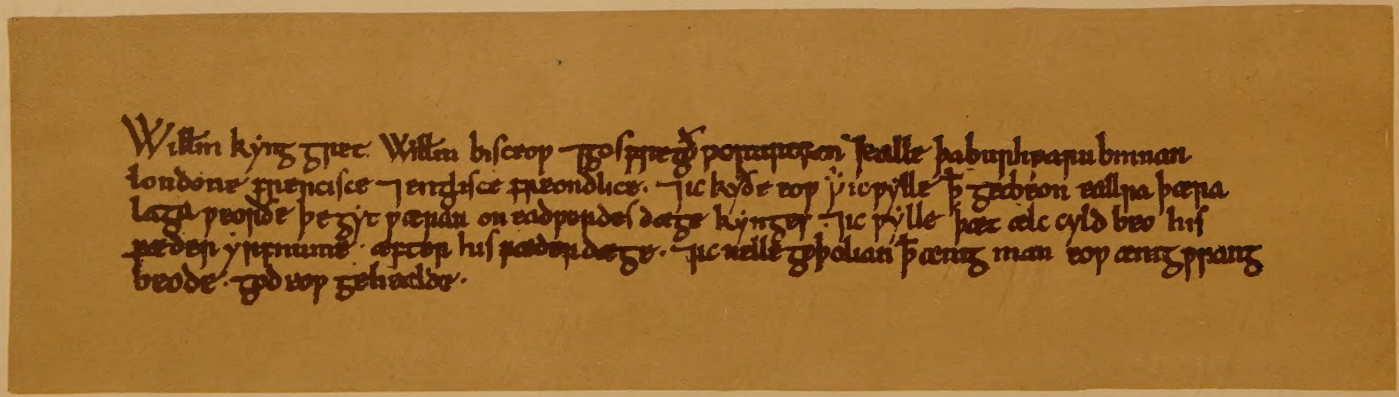

Wilłm kyng gꝛeet Willm biſcop ⁊ goſfrey portgerefan ⁊ alle ſa burhwaru binnan
londone frenciſce ⁊ engliſce freondlice. ⁊ ic kyde eop þ ic wille þ gebion eallra þæra
laga ſe wæren on eadwardes dæge kyngeſ ⁊ ic wille þæt ælc cyld beo his
fæder yrfenume æfter his fæderdæge ⁊ ic nelle geþolian þæt nan man eop enig þing
beode ongean hine.

TRANSLATION.

William, King, greets William, Bishop, and Geoffrey Portreeve, and all the Burghers of London, French and English, friendly. And I make known unto you that I will that ye be worthy all those laws, the which ye were in King Edward's day, and I will that each child be his father's heir after his father's day and I will not suffer that any man do

L 310

HISTORY

OF THE

ENGLISH PARLIAMENT

TOGETHER WITH

AN ACCOUNT

OF THE

Parliaments of Scotland and Ireland

BY

G. BARNETT SMITH

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VOLUME I

FROM THE EARLIEST TIMES TO THE DEATH OF CHARLES II.

SECOND EDITION

WARD, LOCK, BOWDEN & CO.
LONDON: WARWICK HOUSE, SALISBURY SQUARE, E.C.
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1894

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PREFACE.

THE origin, progress, and character of our political institutions have been laboriously described by various modern historians. Dealing with different periods, some of these historians have occupied themselves with the inception, some with the development, and others with the later expansion, of the English Constitution. In the pages of these writers we are enabled to gain a clear and accurate idea of the changes through which the Constitution has passed, and the means by which its successive stages have been evolved. It is therefore no longer a reproach against England that constitutional research is neglected by her historical students.

Chief among contemporary historians for his constitutional lore and erudition is the Bishop of Oxford (Dr. Stubbs). His learned volumes are indispensable to a clear understanding of the early stages of the Constitution. Scarcely second to him in conscientious research was the late Mr. Freeman, whose work on the Norman Conquest is an imperishable monument to that great scholar. A worthy rival to these for critical insight and well-balanced judgment was Mr. Hallam,

who detailed constitutional progress in England from the accession of Henry VII. to the death of George II. Dr. S. R. Gardiner may justifiably be regarded as the most authoritative historian of the seventeenth century; and the late Lord Farnborough produced a useful narrative of constitutional progress in that momentous century 1760—1860. For its breadth of survey and general grasp of principles, Dr. Rudolf Gneist's *History of the English Constitution* has never been surpassed; and the same writer's *Student's History of the English Parliament* is an admirable treatise, though necessarily limited in scope and deficient in detail. For its excellent statement of the theory, methods, and machinery of government, Mr. Alpheus Todd's *Parliamentary Government in England* stands alone; yet Sir W. R. Anson's *Law and Custom of the Constitution* is well deserving of mention in this connection. Among other kindred works, Mr. Taswell-Langmead's *English Constitutional History* is a valuable text-book for students. These are the more recent works of a leading character on the English Constitution; but space would fail me if I attempted to enumerate all the constitutional histories and treatises of value produced during the present century, to say nothing of those treasures of antiquarian and historical research associated with preceding centuries.

The present History, which represents the labour of many years, is not constructed upon the lines of any

of the works just indicated, nor does it enter into comparison with them. It rather claims to be the first full and consecutive history of Parliament as a legislative institution from the earliest times to the present day. I would that I could emulate the ability of the writers I have named; but at any rate I can plead my intense absorption in a great and fascinating subject, and if I can interest the thousands of readers who are attracted by the mighty story of England's Parliament, I shall be abundantly satisfied. To that portion of our Parliamentary history which is less widely known to readers generally—that is, the portion concerned with the earlier stages of our representative institutions—I have naturally devoted the larger share of attention.

All the facts and statements in this work are based on unquestioned authority; that is, the authority of the Parliamentary records, and the writings of historians who have made the various periods dealt with the object of their special research. I desire here to make comprehensive acknowledgment of my indebtedness. It would have given me great pleasure to cite in the footnotes every authority consulted for each statement as it appears; but I soon found that to do this would exhaust half the space I had at command, large as the work is. If, therefore, in this matter I have sometimes left undone what I ought to have done, I trust I shall be pardoned. Although the sources of

original information have been so vast and so numerous, I will only add that I have not consciously incorporated anything into this work that will not bear the test of historical scrutiny.

I now leave this narrative, which I have striven to produce in the true historical spirit and without political bias, in the hands of the reader. Whatever his political views may be, there is much in the stirring record of the British Parliament to make him proud of the ancestors from whose loins he has sprung.

G. B. S.

BOURNEMOUTH,
Sept. 5th, 1892.

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BOOK I.

ORIGIN OF PARLIAMENTARY GOVERNMENT

FROM THE EARLIEST TIMES TO A.D. 1154.

CHAPTER I.

ANGLO-SAXON INSTITUTIONS.

The origin of Parliament.

The people of England regard with just pride the venerable system of Parliamentary Government under which it is their happiness to live. Not only is that system the best calculated for the preservation of liberty; but, as the embodiment of the State in miniature, it is truly representative of the vast and multifarious interests of the nation. The beginnings of our Parliamentary institutions stretch far away into distant ages, long before the Norman William landed upon our shores; and it is impossible now to trace the first foreshadowings of that Constitutional influence which Englishmen of to-day possess in the great Legislative Assembly of the realm. Although the earliest Parliament which can truly be called historical assembled at Westminster on November 27th, 1295, the first mention of the word Parliament in relation to a national assembly is found under the year 1246, while the earliest use of the term in the statutes of England occurs in the preamble to the First Statute of Westminster, 1275. But long before this period our Saxon forefathers had assembled for the enactment and alteration of laws, or for the administration of justice. Their legislative gatherings were of Germanic origin, the various Teutonic races which conquered Britain bringing with them their own laws

CHAP. I

Anglo-Saxon Institutions.

and representative societies. Consultative bodies met to devise measures for the public good; but no record has been handed down to posterity of the eloquence of the Chathams, Pitts, and Burkes who swayed the councils of these earlier times.

Bases of the Constitution.

There can be no society without some form of government, and even the ancient Britons had their municipal and political laws. They possessed their *commune concilium*, or Parliament, which framed laws for the people.[1] According to Julius Cæsar, Cassivelaunus was elected by a *commune concilium* of the States; and Tacitus and Dion Cassius bear testimony to the existence of British laws and institutions. When Lucius, one of the kings of Britain in the second century, sent to Elutherius, the Pope, for the code of Roman laws, the latter, not ignorant of the British institutions, replied: "Thou hast almost every page of them in thy kingdom; from them by the grace of God, by the council of thy kingdom, take the law, and by that power of God rule thy kingdom of Britain."[2] The Britons would certainly seem to have enjoyed liberty, to have been their own legislators, and to have had power to remove for cause their executive. It is, however, quite clear that the principles of our existing political constitution were derived neither from Celtic nor Roman sources, but were of Teutonic origin, as we shall presently see. Still, as one of our ablest historians has pointed out—touching the ancient British institutions, and their subversion by the Saxons—while the student of history "will not find the relations of King, Lords, and Commons accurately balanced in the first Teutonic settlement on the shores of Kent, he may discover the rudiments of all three in days which were ancient in the times of Hengest." However remotely history and tradition convey us back, there will be discovered the germs alike of the monarchic, the aristocratic, and the democratic branches of our constitution. "Our Parlia-

[1] Sir Henry Spelman's *History of English Councils.*

[2] Bede's *Ecclesiastical History.*

ment," to cite the same authority, "is the true and lawful representative, by true and lawful succession, of the ancient Meeting of the Wise; but if we would search out the origin and constitution of the Meeting of the Wise, we must go not to the Parliamentary traditions of the last six hundred years, but to the *Marzfeld* of the Frankish kings, to the *Landesgemeinden* of Uri and Unterwalden, to those yet earlier assemblies which still rise before us in full life in the pages of Tacitus, 'the first inquirer into the habits and institutions of our race.'"[1]

Continuity of National Assemblies.

It is most interesting to note that the continuity of our National Assemblies has never been broken. There has never been a period when we have been completely deprived of a National Assembly; and this distinguishes the history of England from that of every other European kingdom. The Witenagemot changed into the Great Council, and the Great Council into the Parliament, as a distinct result of the Norman Conquest. The word Parliament, which has its Latin equivalent in *colloquium*, came to us from Italy, but through the French, being derived from *parler:* it means a talking or conferring together. *Parlamento* is a meeting of the Florentine people on the piazza of the Signory; but the term Parliament as signifying a general assembly of states was first used under Louis VII. in France, about the middle of the twelfth century. Blackstone affirms that general councils in England are coeval with the kingdom itself, but they were originally composed only of the powerful and privileged classes, and centuries elapsed ere they assumed a popular and comprehensive character. It is not a little curious that the Norman peasantry which revolted in the tenth century established a regular representative Parliament, which was a remarkably faithful prototype of the English one. Two peasants were returned from each district to a general assembly, whose decisions were to be binding upon the whole body.

[1] *History of the Norman Conquest of England, its Causes and its Results*, by E. A. Freeman.

CHAP. I. Anglo-Saxon Institutions.

Here is the actual root idea of what constitutes a true Parliament.[1]

The Village Council.

One origin of all Aryan legislatures is to be found in the Village Council, which was the first effort to create a legislative body. "From this embryo have sprung all the most famous legislatures of the world—the Athenian Ekklesia, the Roman comitia, senate, and prince, and our own Parliament—the type and parent of all the collegiate sovereignties of the modern world, or, in other words, of all governments in which sovereign power is exercised by the people, or shared between the people and the king."[2]

Britain under the Romans.

When Britain was finally subjugated by the Romans, the Roman laws were established in every part of the conquered country, and Britain became a diocese in the præfecture of Gaul. It was divided into provinces, under the direction of a president or consular. The Curia, or ruling body, was composed of senators or decurions, but a species of controlling power existed in the provincial councils and assemblies. Deputies and magistrates from the cities attended them, as well as great landed proprietors; and the Councils assembled at stated times of the year. "Whether these councils were engrafted or not upon institutions subsisting among the conquered nations, they became one of the elements out of which were formed the legislative assemblies of modern Europe."[3]

Saxon Councils.

After the connection with Rome was severed, the Britons were divided into rival communities. Then came the Teutonic occupation of the country, when the Jutes, Angles, and Saxons obtained a permanent foothold. The Saxon settlement was a migration, not a mere conquest, and the Teutons brought with them the elements of civilisation. It was in the village moots of Friesland or Sleswick that our forerunners taught England to be a "mother of Parliaments." Ancient Germany, the

[1] See Freeman's *Growth of the English Constitution.*

[2] Sir Henry Sumner Maine's *Early History of Institutions.*

[3] Sir Francis Palgrave's *History of England: Anglo-Saxon Period* and *Rise and Progress of the English Commonwealth.*

primeval abode of the Jutes, Angles, and Saxons, consisted of many free and independent States. These again were divided into provinces, each of which formed a separate civil community, but one subordinate to the supreme legislative assembly of the State. At the Great Councils, every freeman of a proper age, who had not forfeited his title by any misdemeanour, was bound to be present to declare his assent or dislike to the measures there concerted. The chieftains, the ealdormen, were the priests, law-givers, and leaders of the tribe, but possessed only a temporary political power. The title of king was, strictly speaking, unknown, but the Saxon conquerors assumed the authority of kings. Some authorities state that about the year 477 A.D., Ella first assumed the dignity of Bretwalda, ruler of the Britons, a title of supremacy as much superior to that of an ordinary king as the latter was to the national dignity of ealdorman.[1] But still more recent historians reject this definition: while they accept the title as significant of a substantial hegemony, they controvert the doctrine of Roman influence and continuity, holding the Bretwaldadom to be of purely English growth.

Townships and Moots.

The national organisation under the Anglo-Saxons, from the seventh to the eleventh century, can be succinctly described. The land was appropriated to separate townships.[2] Each township had an organisation of its own, but for certain purposes the inhabitants were united by the mutual responsibility of the kindred. For some purposes they were under the authority of the reeve, who with four elected companions represented the township in the court of the hundred or in the folkmoot. The township was not always independent, being sometimes the property of a nobleman, a follower of the king—bearing variously the

[1] Parry's *Parliaments and Councils of England,* and Palgrave's *History.*

[2] The township was equivalent to the *vicus* of Tacitus; it was the community. Joined with others the *vicus* became the *pagus* and an aggregation of *pagi* was a *civitas* or *populus.*

CHAP. I. Anglo-Saxon Institutions.

style or title of comes, gesith, or thegn. All these were noble companions of the king, and a thegn occupied about the same position before the Conquest as a knight did subsequently. But the organisation of the township remained the same, whether it was absolutely free or under jurisdiction. A cluster of townships formed the hundred or wapentake. The presiding officer was the hundred-man, sometimes elected, sometimes nominated, who called the hundred-moot together, and led it to the shiremoot, etc. He was assisted by a body of freemen—twelve, or a multiple of twelve—who declared the report of the hundred, and were capable of enforcing the law. Nearly all the work of judicature was contained in this. The shiremoot was a ready court of appeal, the royal audience being accessible only when hundred-moot and folkmoot had failed to do justice. A cluster of hundreds made the shire, with the ealdorman, sheriff, and bishop as officers. Its councillors were the thegns, who declared the report of the shire; its judges were the folk assembled in the shiremoot, the people, the lords of land with their stewards, and the reeve and four men, with the parish priest, from the townships. To define in brief the Anglo-Saxon or early English constitution, it was of the ordinary type of "that common polity or germ of polity which we find in all the rude nations that have attained civilisation—a consultative and tentative absolutism."[1] There was a king—the chosen representative of the race, their leader in war and their judge in the last resort—an assembly of the wise, and the concourse of the people.[2]

The Shiremoot.

The shiremoot, or county court, which was the real folkmoot, was the most complete organisation under the Anglo-Saxon system. It was not the Witenagemot of the shire, but the real assembly of the people. All freemen appeared in it, either in person, or by representation. Its ealdorman was appointed by the Witan of the whole

[1] *The English Constitution*, by Walter Bagehot.

[2] Sir W. R. Anson's *Law and Custom of the Constitution*: Part I., Parliament.

nation, like the *princeps* of Tacitus ; its reeve was elected from below, and authorised from above, like the king or bishop. The ealdorman led the whole shire to the host ; the sheriff commanded the freemen, the lords their comites and vassals, the bishop's reeve or abbot's reeve the tenants of the churches ; but all were under the ealdorman as the national leader. The ealdorman and bishop attended the Witenagemot; and the sheriff executed justice and secured the rights of the king or nation in the shire. The county court passed through many changes, and the king acquired a close connection with it through his shire-reeve, the ealdorman and bishop being gradually supplanted. Under the Norman kings the court was called monthly, instead of twice a year like the old folk-moot ; but at the same time the older and fuller form of the court was still called twice a year, chiefly for Crown purposes. Indeed, after the Conquest the shiremoot gained more in connection with the central power than it lost in independent action. It was interwoven with civil and criminal procedure, and had numerous other duties, connected with the election of coroners, the assessment and collection of carucage—a tax originally levied at so much per plough—the exaction of oaths of allegiance, and, most important of all, the election (after 1254) of knights and burgesses to Parliament.[1]

The Witenagemot.

The union of shires formed the kingdom, and the national council was the Witenagemot, or the Assembly of the Wise Men. Each Anglo-Saxon kingdom, in the time of what is styled the Heptarchy, had its witenagemot, and it was not until Wessex had finally annexed the other kingdoms that the nation was counselled for by one Witenagemot. The theory that every freeman had a right to come to the Witenagemot, as he had to the shiremoot, is not substantiated ; though on certain

[1] Further references to the county court will be made at a later stage. It must not be confounded in powers and jurisdiction with the existing county court, which is merely an institution—though a very valuable one—for the transaction of minor judicial business.

CHAP. I. Anglo-Saxon Institutions.

important occasions, as at the election of a new sovereign, the mass of the people attended the meetings of the Witan, and shouted agreement with or disapprobation of the proposals made. But neither in its earlier nor in its later form, neither under seven kingdoms nor one, was the Witenagemot formed on the model of the lower courts. It was not a folkmoot; and although it represented the people from the fact that it contained the leaders in Church and State, it was not a collection of representatives. Its members were the principes, the sapientes, the comites and counsellors of royalty, the bishops, the ealdormen, and the king's thegns. It was never a large assembly. It contained seventeen bishops, a number of ealdormen variable according to the distribution of the shires, and never probably exceeding twenty, and an indeterminate number of vassal members, gradually increasing as the power of the Crown became greater and the number of jurisdictions multiplied under the leaven of feudalism. Only the king's greater subjects thus consulted on important matters, but in smaller matters the whole nation had a voice. The ordinary people, the folk, rose no higher than the shiremoot, and the whole claims of the nation as against the king were vested in the Witenagemot; so, that, as the character of the king varied, those claims were more or less actively exercised. The Witan, where able, had the right of electing and deposing kings; in conjunction with the king, of nominating ealdormen and bishops, of regulating the transfer of public lands, of imposing taxes, of voting supplies, and so deciding war and peace, of authorising the enforcement of ecclesiastical decrees, of joining in the making of laws, of sitting as a high court of justice over all persons and causes. "But under a strong king many of these claims are futile; the whole public land seems, by the eleventh century, to have been regarded as at the king's disposal really, if not in name; the sheriffs, ealdormen, and bishops are named by the king; if he be a pious one, the bishops are chosen by him with respect to the consent of the diocesan clergy; if he be a peremptory one, they are appointed by his deter-

mined will. But the powers of legislation and taxation are never lost, nor does the king execute judgment without a court which is in name, and in reality perhaps, a portion of the Witenagemot."[1]

Its constitution.

Professor Freeman and Bishop Stubbs agree as to the powers of the Witan, but differ altogether as to the constitution of the Witenagemot. Freeman—following Kemble, author of *The Saxons in England*—regards the Witenagemot as an assembly of the whole kingdom, after the type of the smaller assemblies of the shire and other lesser divisions. The Bishop fully admits the popular character of the smaller assemblies, but denies any such character to the national gathering; Freeman (*Norman Conquest*, vol. i., note Q) quotes a number of passages which seem distinctly to imply that every freeman had theoretically a right to attend the Witenagemot. Some of the expressions used, he remarks, might be applied without impropriety to a representative assembly, but they could not be applied to a body not representative, unless, in theory at least, it took in the whole nation. The passages further seem to prove that some form of demanding the assent of the people at large was always retained.[2]

Folkmoots and Witenagemots.

To sum up the character of the Anglo-Saxon moots: the folkmoot was a popular assembly of the shire, and a

[1] Bishop Stubbs's Introductory Sketch to the *Select Charters*.

[2] Ladies of birth and quality frequently sat in council at the Saxon Witenagemots. In a great council held at Bapchild, A.D. 696, the abbesses sat and deliberated, and five of them signed the decrees of that council with the bishops and nobles. In Henry III.'s and Edward I.'s time, four abbesses—viz., those of Shaftesbury, Barking, Wilton, and St. Mary of Winchester—were directed to send proctors to Parliament. To a parliament called by Edward III. in 1362 the following abbesses were summoned to send proctors: the Countesses of Norfolk, Ormond, March, Pembroke, Oxford, and Athol; and the Baronesses Anne Despenser, Johanna Fitz-Walter, and Margaret de Roos. The summoning by proxy was a privilege once peculiar to the peerage. I cannot find that any lady was ever summoned to send proctors to Parliament after the reign of Edward III.

CHAP. I. Anglo-Saxon Institutions.

representative body to a certain extent. The Council of the whole state was not a folkmoot, but a Witenagemot; and, although the matter cannot be decided by actual examples, it is not improbable that two central councils—the folkmoot or council of the people, and the Witenagemot or council of the chiefs—were in separate but simultaneous action in each kingdom. But before the time of Alfred at least, the national assembly, in which the laws were promulgated, must have comprised a much wider class than the Witan. On great occasions, as before remarked, the Witenagemot was attended by a concourse of people, whose voices could be raised in assent or resistance to the proposals of the chiefs; but the people did not share in the constitutional powers of the Witan, nor were they called together in any representative character, as in the case of the folkmoot. Whenever the populace were present at a Witenagemot, it was almost invariably on important occasions, such as when a Danish invasion was announced, or a king was to be elected, or laws promulgated. Towards the period of the Conquest, in all likelihood great courts were held at Easter, Whitsuntide, and Christmas, when the deliberations of the Witan took place in them; and at such courts there would be large popular gatherings, which, while destitute of organisation, might be said to represent the nation at large.[1]

Powers of the Witenagemot.

Kemble, whose able work upon the Saxons[2] just alluded to is regarded as authoritative, furnishes a list of 147 witenagemots, from the year 698 to 1066. In the records, the national meetings were styled, like all the Saxon law court assemblies, gemotes; and the subjects for deliberation included decrees as to war and peace, and resolutions as to the legal system, but especially as to the maintenance of the peace, and police regulations. The ordinary business included the settlement of disputes between powerful thegns and prelates, and popular grievances of all sorts, especially complaints of the

[1] Stubbs's *Constitutional History.*

[2] *The Saxons in England*, by John Mitchell Kemble, 2 vols., 1849.

denial of justice. The Witenagemot was not so much a court of appeal as a supplementary resource for those who were unable to obtain justice in the county. The enacting character of the assembly was expressly affirmed, and its consent explicitly mentioned in the conclusion of contracts, the summoning of the army, and in ecclesiastical ordinances, but most frequently of all in the allodification of folkland. William of Malmesbury defines the Saxon Witenagemot as "a general assembly and ordinance of the senators and people"; Sir Henry Spelman calls it "an assemblage of the chiefs of the kingdom, bishops as well as magistrates, and the freemen, to consult on the common safety, on peace and war, and to promote the public welfare"; and Camden observes that "what the Saxons formerly called Witenagemot, we call Parliament, and it may justly be styled the commonwealth of all England: it possessed the inviolable authority of making, confirming, repealing, and interpreting the laws, and of all things which regarded the common weal."

Church and the State.

The development of the Church in its bearing upon the State must now be noted. The mark, or township, became the sphere of duty of a single priest, and later was called his parish; the kingdom became the diocese of a bishop; the whole land the province of the metropolitan: the rival archbishops headed rival nationalities; the greater dioceses were subdivided on the lines of the earlier under-kingdoms in six of the seven states, and when Wessex late in the day began to subdivide, she followed the same idea. The organisms of Church and State advanced side by side; the shires became the archdeaconries, and the hundreds the deaneries of a later age. The archdeacon or bishop presided with the ealdorman and sheriff in the shiremoot; the parish priest led his people to the hundred-moot, or even to the fyrd—the military gathering for the defence of the country; and the Witenagemot had its most distinct and permanent constituent in the clergy, bishops, and abbots. In fact, under the Heptarchic arrangement there was no organised unity but the ecclesiastical. In this aspect the Church

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was older than the State. The only national councils were those of the Church, and the metropolitan was the only person whose word had the same force everywhere. The nation first began to realise its unity through the Church.[1]

Legislation and taxation.

Legislation and taxation were at first confined within narrow limits. The working of the *trinoda necessitas*, and the rents of the public lands, obviated the necessity for any other expenses of government. The *trinoda necessitas* was the threefold obligation of repairing bridges, keeping up fortifications, and performing military services, all being incumbent upon every holder of land in Anglo-Saxon times even if he were exempt from every other service. The earliest mention of these obligations occurs in the beginning of the eighth century. Extraordinary taxation was imposed by the Witenagemot, as the Danegeld or the shipgeld ; a regular tax of two shillings on every hide of land furnished a bribe to the Danes, or a contribution of a ship and its equipments was levied on the shires to enable the king to resist the invaders. The great body of the common law existed as yet only orally or by custom, and the laws were most concerned with minor adjustments. The king was not the supreme lawgiver or the one primary landowner, but the chosen head of the race, its leader in war, its guardian in peace, and the president of its assemblies. The chosen of the people, and answerable to them, he was in effect the national representative. Though the chief judge of the nation and leader of the army, his power was limited by a council of free advisers ; and he was bound by oaths to his people, to govern righteously, and to maintain religion, peace, and justice.

Government in the tenth century.

Such, with modifications according to circumstances, was the order of government among the Anglo-Saxons. The general machinery indicated was in action for four centuries preceding the conquest, but with varieties of practice in different ages and districts. Towards the end

[1] Stubbs's *Select Charters.*

of the tenth century, however, a change set in which threatened the establishment of feudalism. Under Edgar and also under the great Danish king, Canute, the government was centralised, and the power of the king increased. The king disposed of the public lands without regard to the Witan, and royal vassals, with royal and noble jurisdictions, were created in great numbers. Canute took an important step in the direction of imperial feudalism by rearranging the kingdom under a small number of great earls, keeping Wessex under his own immediate rule. In his government, it was his desire to rule England for the English and by the English, and he strenuously endeavoured to carry out this rule. He treated all his subjects as members of the same body politic, was liberal towards the Church, instituted a kind of standing army, and by just and impartial government advanced the interests of the English people.

The Doom of Ethelbert.

Having completed a general sketch of Anglo-Saxon polity, I will now proceed to cite individual acts of legislation and the promulgation of laws. Authentic documents have been recovered which throw light upon the public assemblies, taxation, the courts of law, and the condition of the people. Ethelbert, king of Kent, who died in 616, was distinguished as the author of the first written Saxon laws. These are the *Dooms*, as they are styled by Bede, which the king "established with the consent of his Witan in the days of St. Augustine." They are in the Saxon language, and are the earliest written laws that exist in any modern tongue. In all the Anglo-Saxon kingdoms, the consent of the national council was requisite for exacting laws, levying taxes, and for ratifying the chief acts of public administration. The preambles to all the laws of Ethelbert, Ine, Alfred, Edward the Elder, Athelstan, Edmund, Edgar, Ethelred, Edward the Confessor, and even Canute, bear testimony to the existence of a limited and legal government, and put the matter beyond controversy.

Ine's Laws

Ine, king of Wessex 689—727, framed a code of laws, of which the preamble says, "I, Ine, by God's grace king

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of the West Saxons, with the counsel and with the teaching of Cenred my father, and of Hedde my bishop, and of Eorcenwold my bishop, with all my ealdormen and the most distinguished witan of my people, and also with a large assembly of God's servants, have been considering of the health of our souls and of the stability of our realm ; so that just law and just kingly dooms might be settled and established throughout our folk, so that none of the ealdormen nor of our subjects should hereafter pervert these our dooms." In the year 712 Ine assembled a great council or parliament, wherein he made ecclesiastical laws concerning marriages, etc., and did other things "to promote the public peace, by his Witenagemot, and with the assent of all the bishops, thegns, and ealdormen, and of all the wise old men and people of the whole kingdom."[1] According to Bede, the grand league and union between the Britons, Saxons, and Picts was concluded and confirmed by the Witenagemot, with the common counsel and assent of all the bishops, etc., and of the people, and by the precept of King Ine.[2]

Deposition of Kings.

In 754 the Witan, the wise men of Wessex, being the parliament or council of the land, took the kingdom from Sigebert, because he had perverted the laws, and gave it to Cynewulf. This power of deposing their king has never been surrendered by the people.

Council of Kingsbury.

On the death of Egbert, in 838, and on the succession of his son Ethelwulf, the Mercians and West Saxons united to repel the invading Danes, and a great congress was held at Kingsbury, composed of the prelates and nobles of the two nations. This historical fact alone sufficiently proves that under Egbert no general consolidation of the States of the Heptarchy had taken place, and that the union thus described was an exception to the established usage of the kingdoms. In the year 855 Ethelwulf gave the tithe of his kingdom to the Church, as stated in the preamble to the Act, "with the advice of the bishops and

[1] *Et omnium sapientum seniorum et populorum totius regni.*

[2] Bede's *Ecclesiastical History*, Book I.

chief men (the archbishops and bishops of all England being present and subscribing thereto, as also Beorred, king of Mercia, and Edmund, king of the East Angles), and of the abbots, abbesses, thegns, ealdormen, and great men of the kingdom, and an infinite number of other faithful people, who all applauded this act of the king."

Tithes.

This "Donation" by Ethelwulf is frequently said to have originated the system of tithes; but it was merely "the devotion of a tenth part of his private estate to ecclesiastical purposes, the relief of a tenth part of the land from all payments except the *trinoda necessitas*, and the direction that every ten hides of his land should provide for one poor man or stranger." The payment of tithes in England was in force some time before the reign of Ethelwulf, and was recognised as authoritative in the legatine councils of 787, which were attended by kings and secular magnates, and consequently had the authority of witenagemots. Danish settlers in England were rendered liable to tithes by the laws of Edward and Guthrum; and Athelstan issued a special ordinance to the sheriffs for the payment of tithe over the whole kingdom.[1]

Constitutional progress under Alfred

The reign of Alfred the Great is distinguished above all other early reigns for its constitutional advances. This noblest of English kings sought to establish a reign of law. He set forth a collection of the laws of the three principal states over which he ruled—the Kentish, the Mercian, and the West Saxon—and into these laws, with the counsel of his witan, he introduced some changes, though not many enactments of his own, lest they should be repudiated by his successors.[2] Alfred organised the Witenagemot on a more regular plan, and ordained a perpetual custom that, "twice in the year, or oftener in time of peace, if business so required, they should assemble at London to treat of the good government of God's people, and how folks should be restrained from offending, and live in quiet, and should receive right, by certain

[1] Selden's *History of Tithes*, etc.

[2] Lappenberg's *History of England under the Anglo-Saxon Kings*.

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usages and judgments," etc.[1] He also convened assemblies which partook of the nature of the present Cabinet and Privy Councils, in which there was a previous consideration of such measures as were to be submitted to the Witenagemot. At the diet itself, or Witenagemot, the public affairs were disclosed, according to the old custom, by those who had the privilege of so doing. The local assemblies of nobles and freemen now diminished in importance, and the general diet, both among the Saxons and Angles, was no longer confined to any particular period of the year. As often as circumstances required, those bidden to do so repaired to the king at his villa, or elsewhere, and deliberated together on the public business.[2] According to William of Malmesbury, the division of the kingdom into hundreds and tithings was due to Alfred : it may possibly be that he revived the hundred as a basis of rating.

Alfred's Laws.

Alfred is further credited with the invention of trial by jury, and many other salient elements of the law, of which there were faint foreshadowings long before his time, and which did not take their present shape until ages after his death. But this illustrious monarch enjoys sufficient glory for what he actually did without traditional merits being imputed to him, and his character stands forth as one of the most glorious that ever adorned the kingly office. In 879 Alfred defeated the Danes, and concluded a treaty of peace with their king, Guthrum, who embraced Christianity and became sovereign of East Anglia. The treaty is thus described : "This is the peace that King Alfred and King Guthrum, and the witan of all the English nation, and all the people that are in East Anglia, have all ordained, and with oaths confirmed, for themselves and for their descendants, as well for born as for unborn, who reck of God's mercy or of ours." Alfred issued specific laws upon treason and manslaughter, with a statement concerning the *wergild*, or payment for

[1] Palgrave's *History*, etc.

[2] Dr. Reinhold Pauli's *Life of King Alfred.*

the slaying of a man. He is further regarded, and not without reason, as the founder of the English navy.

An enlightened Wessex king.

About the year 920 Edward, King of Wessex, exhorted his witan at Exeter to search out how their "frith" might be better observed than it had previously been. He then asked them who would apply to its amendment, to be in that fellowship that he was, and love that which he loved, and shun that which he shunned, both on sea and land. No man was to deny justice to another: if he did so, let him make "bot" (reparation), as before written—for the first offence, with thirty shillings; for the second offence, the like; and for the third, with a hundred and twenty shillings to the king. Edward willed that each reeve have a gemot always once in four weeks; that every man be worthy of folk-right; and that every suit have an end and a term when it shall be brought forward. If any one disregarded this, he was to make "bot" as before ordained. Edward also published laws on the various ranks of people in the community, providing a higher grade for those who proved themselves worthy.

The Laws of Athelstan.

Athelstan, who reigned from 925 to 941, proposed various laws in an important assembly held at Greateley. These laws were subsequently confirmed at five other places. The king inflicted a penalty upon any one who, when summoned, failed to attend the gemot thrice. Athelstan was a wise lawgiver as well as a great warrior. His ordinances were particularly directed to the enforcement of the system of mutual assurance and association. He likewise enacted a law that every landless man should have a lord; and the *Judicia Civitatis Lundoniæ*, which owe their promulgation to him, are very valuable in connection with the history of guilds and civic associations. Athelstan's legislation relating to the frank-pledge led later to a more definite embodiment of this law of security. Frank-pledge, or *frithborh*, or, as it was called in the north, *tenmannetale*, was an association of ten men, under the *borhs-ealdor*, *frithborge-head*, or *capital pledge*, who were to be standing securities for each other, bound to produce any one of

Frank-pledge.

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their number if called upon by the law to do so, and, if they were unable, liable to pay for what he had done amiss unless they could purge themselves from all complicity in the matter. The associations were called *tithings*, and every man was obliged to be a member of one such body. The frank-pledge was a kind of artificial prolongation of the family tie, and, as based on the principle of the law of Athelstan, it provided that every man should have a security for him. Athelstan's law, re-enacted with additions by Edgar and Canute, resulted in the frank-pledge, which is first described in the laws of Edward the Confessor, who reigned from 1042 to 1066. These laws, however, were not actually compiled in Edward's time, but are a later report of the customs prevailing. The actual law of frank-pledge does not seem to have been older than the time of the Conquest. The view of frank-pledge was a conspicuous item of business in the local courts, and ultimately reverted to the court leet. In later stages the capital pledge and other representatives of the tithing often had the duty of representing their township in the shiremoot. This brought together the conceptions of township and tithing, and in this lay the chief historical importance of the frank-pledge.[1]

Council of Edmund.

Returning to the Anglo-Saxon assemblies, in 944 Edmund, brother of Athelstan, held a great council of the clergy and laity at London. Another brother, Edred, succeeded to the throne with the approbation of the Witenagemot. He inherited the fourfold empire of the Anglo-Saxons, Northumbrians, Pagans, and Britons; but each of these states and communities was virtually independent of the other members. There was one sovereign, one empire, many kingdoms and provinces, many customs and laws; and it was not until a later period that England, in reality as well as in name, became one kingdom, governed by one king, and possessing one supreme legislature. In Edred's reign many administrative and ecclesiastical reforms were initiated.

[1] Stubbs's *Constitutional History*.

Edgar, one of the greatest of these early kings, came to the throne in 959, and his reign is one of considerable constitutional significance. He ordained the holding of a burghmote thrice in the year, and of a shiremote twice. He also perfected and defined the laws bearing upon the system of mutual responsibility. The oaths of fidelity, taken at Chester by the vassals of Edgar, and their military obligations, constitute two of the elements of feudality. The donation of land and the tie of vassalage grew up with the Anglo-Saxon kingdoms, and under Edgar the system was carried to its full extent. Edgar issued an important ordinance as to how the *Hundred* should be held. Under the Germans, the tribes were divided into hundreds—a term which originally signified a hundred warriors that each *pagus*, or district, was obliged to furnish in war. Then the number gave place to a name only, as the sign of a division. Edgar utilised the hundred for the purpose of grouping districts for judicial and police purposes. Both Alfred and Edgar evidently regarded the revival or development of the system of hundreds as a necessary part of the work of reorganisation demanded after the Danish invasion.

Constitutional changes under Edgar.

It was in the time of Edgar that the statesmanship of St. Dunstan had its greatest triumph. Edgar's glorious reign was in fact the result of the realisation of Dunstan's ideas. The hegemony of Wessex was established upon a firm basis, without the degradation of the other states: thus for a second time the policy of Dunstan was successful, for it had been mainly owing to him that the West Saxons conquered Northumbria from the Danes, which led to the assumption of the title of Cæsar by Edred in 955.

St. Dunstan.

A witenagemot held at Winchester, A.D. 975, placed Edward the Martyr on his father's throne; and four years later, on the murder of this king, an assembly of nobles, prelates, and great men, raised to the throne his half-brother, Ethelred II. The charters and laws of the reign of Ethelred are abundant, and they are of much value as illustrating customs and procedure. This king was deposed by one Act of the Legislature and restored

Meetings of the Witan.

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Ethelred's memorable legislation.

First laws against the slave trade.

by another. On two occasions we find the Witan meeting to confirm grants made by the sovereign. The years 1008 and 1009 are memorable in the annals of early English legislation. The functions of the Witan were in full activity. One important statute dealt mainly with ecclesiastical matters. There were laws against the slave trade, which had become a crying evil; but unfortunately they were so vague, that they had little practical effect. The formation of a fleet was decreed, and ordinances were passed against desertion from the land force. A statute to the same effect was afterwards passed by the Council of Enham, and it is noteworthy that this law is made in the name of the Witan only, without any mention of the king. But the action of the Witan implies the action of the king, and such statutes as that of Enham probably only mean that they were more distinctively the work of the Witan than of the sovereign. Like the Great Charter wrung from King John, the laws of Ethelred sprang from the best elements of wisdom that the great council of the nation could supply, and they manifested a real desire after national reformation and national defence. The whole tone of the laws was pious and patriotic, and they no doubt bore the impress of the good Archbishop Ælfheah.[1]

Later ordinances of Ethelred.

In the year 1013 Ethelred fled to Normandy before the power of Sweyn, who was chosen "full king of England." On the death of Sweyn, Canute was elected king by the Danish portion of the inhabitants, but the Witenagemot resolved to restore the line of Cerdic, and Ethelred was reinstated under certain conditions. Ethelred entered into the important engagement that he would in all things submit to the advice of his Witan. In 1014 the king and his Witan passed a number of well-known laws, which related mainly to ecclesiastical matters, and were animated by the commendable spirit of the previous laws of Ethelred. These later ordinances expressly approved the conduct of certain earlier

[1] Freeman's *Norman Conquest.*

assemblies, held under Athelstan, Edmund, and Edgar, which dealt with ecclesiastical and temporal affairs conjointly, and they apparently deplored a separation between the two branches of legislation which had taken place in some later assemblies. Ethelred's solicitude with regard to ecclesiastical legislation is a striking illustration of the fact, well known to students of Anglo-Saxon times, that in the days of the native kings there was a far more complete identification of the Church and the nation than can be found at any time after the Norman Conquest. Bishops and ealdormen were appointed and deposed by the same authority; they sat side by side to judge and to legislate on matters which, after the Conquest, would have been discussed in distinct assemblies.[1]

Important Witenagemots.

According to Mr. Freeman, a great witenagemot was held in the year 1015 at Oxford, a place already of considerable importance. Mention of the town as the seat of a school or college occurs as early as 802. There is no record of the above witenagemot in the *Select Charters*, but Bishop Stubbs gives an important ordinance "which King Ethelred and his witan ordained as *frith-bot*[2] for the whole nation, at Woodstock, in the land of the Mercians, according to the law of the English." Among other things, this ordinance decreed that every freeman should have a true *borh*;[3] that a gemot be held in every wapentake (a Danish term answering to the hundred); that Christian men and uncondemned be not sold out of the country, especially into a heathen nation; that Christian men for all too little be not condemned to death; that God's law be henceforth zealously loved by word and deed; and that no one return from the military service without leave, except at the peril of himself and all his estate. The following noble Christian sentiment, which needs to

[1] Freeman's *Norman Conquest*.

[2] Amendment of peace, payment to a tone for breach of the peace.

[3] Surety.

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be remembered nearly nine centuries later, appears in this ordinance: "In general let mild punishments be decreed, for the people's need; and let not, for a little, God's handywork and His own purchase be destroyed, which He dearly bought."

Edmund Ironside.

Notwithstanding excellent laws, however, the reign of Ethelred was an ignominious one, the misgovernment being open and notorious. On the death of Ethelred, in 1016, the citizens of London chose Edmund Ironside for king; but by far the greater part of the bishops, abbots, ealdormen, and other persons of rank, flocked to Southampton, and, claiming to be the real Witan of England, declared for Canute. Fierce war now ensued, and the Witan proposed that a division of the country should be made between the two kings. This was arranged at a meeting on Olney Island, close to Gloucester, where it was agreed that Edmund was to be the head king, and have Wessex, Essex, and East Anglia, with the city of London; and Canute was to have Mercia and Northumbria. After a brilliant reign of only seven months, Edmund died Nov. 30th, 1016, having probably been murdered by the treacherous Edric.

The Laws of Canute.

Canute was accepted as sovereign of the whole kingdom in 1017. The formal choice took place at a witenagemot held at London 1016-17, Canute's election being accompanied by a formal exclusion of the brothers and sons of Edmund. Whether the electors acted under restraint or not, it is admitted that no royal election was ever more regular in point of form, while in no recorded transaction do the popular principles of the ancient English constitution stand forth more clearly. The reign of Canute is important from the constitutional point of view. In 1018 there was held a great council or witenagemot at Oxford, attended by a large body of the chief men of both nations, Danish and English, when a decree was made for the observance of the laws of King Edgar. This does not mean that Edgar was the actual author of the laws, but that the laws were those which he observed. His ordinances were demanded

because they were those of a king who had left behind him a reputation for just government; and Canute's undertaking in effect was that his government should be as good as that of his popular predecessor Edgar. Canute ordered a burh-gemot to be held thrice a year, and a shire-gemot twice, "unless there be need oftener"; and no man was to take any distress, either in the shire or out of the shire, before he had thrice demanded his right in the hundred. If at the third time he had no justice, he was to go at the fourth time to the shire-gemot, which would appoint a fourth term. "If that then fail, let him take leave either from hence or thence, that he may seise his own." The king also willed that every free man be brought into a hundred and into a tithing. If any man died intestate, the property was to be distributed very justly to the wife and children and relations, according to their several degrees.

Elevation of Godwin.

In April 1020 a witenagemot was held at Cirencester, when Canute banished the ealdorman Æthelweard, this being his last recorded act of severity towards any Englishman. At the same gemot the king showed how anxious he was thoroughly to identify himself with England by appointing Godwin Earl of the West Saxons. Thus an Englishman was elevated to a place in the realm second only in power and dignity to that of the sovereign.

Spirit of Canute's legislation.

A charter has been recovered which affords a striking illustration of the policy of Canute towards his English subjects, and of the general spirit of his legislation after his rule was universally admitted. The year 1020 is assigned to the probable date of the charter, which is addressed to the Earl Thurcyl, who was outlawed in the year following. Canute the king greeted his archbishops and his suffragan bishops, and Thurcyl the earl, and all his earls, and all his people. "I do you to wit that I will be kind lord and unfailing to God's rights and to right secular law." After observing that no further harm should come to his English subjects from the Danes, the king decreed punishment against any who

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should be so bold, clerk or lay, Dane or English, as to go against God's law, the royal authority, or the secular law. Then he willed that all people should hold fast Edgar's law, which all men had chosen and sworn to at Oxford; that they should eschew all crimes, that they should keep Sunday's festival with all their might, observing it from Saturday's noon to Monday's dawning, neither going to market nor seeking any court on that day; and that all men, poor and rich, should seek their church and ask forgiveness for their sins, and keep earnestly every ordained fast, so that king and people might, through God's mercy, come to the joy of the kingdom of heaven.[1]

Redress of grievances.

Further, in the famous letter to his people on his Roman pilgrimage,[2] Canute promised reformation of anything which might still be amiss. All grievances should be redressed, and no extortions allowed; for the king needed no money raised by injustice. The laws of Canute were generally wise, far-seeing, and just. He did not move without his Witan, and the old assemblies, tribunals, and magistrates retained their rights and powers. No distinction, except the old local one, was made between Danes and Englishmen, the local rights and customs of both being strictly maintained. But on one point Canute was in advance of later legislation. While trespassing on the king's forests was forbidden, the natural right of every man to hunt on land in his own occupation was emphatically asserted. Canute, attended by his counsellors and scribes, frequently traversed all portions of his dominions, vigilantly administering the laws. He obtained a great hold upon the popular affection, and after his power was once fully established there is no record from trustworthy English sources of any complaint against his government.[3]

Great Gemot at Oxford.

After the death of Canute, in 1035, the claims of his son Hardicanute, or Harthacnut, were supported by the West Saxons, with Earl Godwin at their head. But on

[1] Stubbs's *Select Charters.*

[2] Lappenberg assigns this pilgrimage to the year 1027.

[3] Freeman's *Norman Conquest.*

the other hand Harold, a reputed son of the late king, was supported by Earl Leofric of Mercia, by the great body of the thegns north of the Thames, and by the *lithsmen*, the seafaring folk of London. The controversy was decided by the Witan of all England, which met in full gemot at Oxford. Here we have clearly a National Council or Parliament in which the claims of two royal candidates were debated and decided. Godwin eloquently pleaded the claims of Hardicanute, whose birth was undoubted, and who had been recommended by his father. Earl Leofric, however, proposed the division of England between the two candidates, and this was voted by the assembly. For the last time England was now under two kings, Harold I. reigning to the north of the Thames, and Hardicanute to the south; but a kind of imperial supremacy was reserved to Harold. In 1037 the people "chose Harold over all to king, and forsook Hardicanute, because he was too long in Denmark." This is interpreted to mean that the Witan of Wessex, in discharge of their undoubted constitutional right, deposed Hardicanute and elected Harold as their immediate sovereign, the election being apparently confirmed by a vote of the Witan of all England. Thus, England again became one kingdom, under one ruler, and the union has subsisted down to the time of Victoria.

Rule of Hardicanute.

Nothing is known of Harold's administration, except that great abuses prevailed in the Church. After Harold's death, in March 1040, the Witan of all England, Danish and English, unanimously chose Hardicanute to the kingdom. Hardicanute proved a worthless king, his public deeds being described as rapacious, brutal, and bloodthirsty. One of his first acts was to levy a heavy Danegeld, which led to a revolt at Worcester. He also caused Godwin to undergo a regular trial before the Witan, on the charge of murdering the king's brother Alfred. Godwin was triumphantly acquitted, his solemn plea of Not Guilty being confirmed by the oaths of most of the earls and chief thegns of England. "The only difference between such an acquittal and a modern acquittal

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on a trial before the House of Lords is that, in the ancient mode of procedure, the voices of those who of their own knowledge affirmed Godwin to be innocent, and the voices of those who accepted his innocence on their testimony, were all reckoned together. Godwin was acquitted after the most solemn trial provided by the jurisprudence of his own time." There is, notwithstanding, much contemporary evidence to the effect that Godwin betrayed Alfred to Harold. However, he is in fairness entitled to the full benefit of his acquittal, though the jurisprudence of the age was imperfect, and the functions of witness, judge, and juror were not as yet accurately distinguished.[1]

Election of Edward the Confessor.

Upon the death of the thoroughly hated king, Hardicanute, in 1042, Edward the Confessor, only surviving son of Ethelred, was elected king. By his mother Emma, Edward was second cousin to William the Conqueror. It seems that immediately upon Hardicanute's death the citizens of London, whose importance now grew at every step, met—together with such of the Witan as were at hand—and at once chose Edward king. The election by the Witan gave to Edward the sole right to the crown; but he was not full king and in actual possession of the royal office until his ecclesiastical coronation, and this did not take place until Easter of the following year, at Winchester.

An English King.

Edward, who was abroad, accepted the crown, and returned to England. But when the Witan presently met at Gillingham, in Wiltshire, there was some opposition to Edward's claims, a Danish party favouring the pretensions of Sweyn, Canute's nephew. Earl Godwin proposed Edward for king, urged his claims with persuasive eloquence, and set others an example by becoming his man on the spot. Bishop Lyfing also spoke powerfully for Edward. A few stood out against Edward's election, however, to the last; but in some manner or other Sweyn and his followers were eventually pacified. England really demanded an English king, and there was

[1] Freeman's *Norman Conquest*

no English sovereign possible but Edward. He was therefore elected, and reigned, as every English king before him had reigned, by that union of popular election and royal descent which formed the essence of all Teutonic kingship. But he was not the next in succession, according to modern ideas. There was an Edward away in exile, who was the lawful heir according to later traditions; but any son of Ethelred, any descendant of the old stock, satisfied the sentiment of royal birth; and to search through the world for the son of an elder brother, while the younger brother was close at hand, was an idea which would never have entered into the mind of any Englishman of the eleventh century.[1]

Witenagemot at Gloucester.

A witenagemot assembled at Gloucester in November 1043, when the conduct of Emma, the king's mother, was the great subject of debate. The result of the deliberations of the wise men was that the queen-mother was despoiled of her treasures, which were very great, and she was bidden for the future to live quietly at Winchester. This would seem to imply that she had favoured Sweyn's party, and cherished designs inimical to Edward. Edward now began a general banishment of Sweyn's supporters, while his own love of the Normans, and their rapid promotion, led to an estrangement between the king and Godwin, the latter becoming more and more the centre of the English party.

The Witan as a Court of Justice.

The proceedings of the Witan as a court of criminal jurisprudence are well exemplified in the patriotic struggle of Godwin and his family with the foreign minions of Edward, and the northern earls, the hereditary enemies of their house.[2] In 1051 the king—who had already rejected the choice of Godwin and the monks for the see of Canterbury, and appointed Robert of Jumièges archbishop—required the earl to punish the men of Dover for resisting by force the insolence of Eustace, Count of Boulogne, and his armed retinue. Godwin refused,

[1] Freeman's *Norman Conquest.*
[2] Kemble's *Saxons in England.*

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without a fair trial, to punish the people of Dover for an act of self-defence against the foreign adventurers; whereupon the king summoned a meeting of the Witan at Gloucester to sit in judgment upon Godwin himself. The earl was called upon to answer before the gemot, but as he was refused a safe-conduct, he declined to appear. The meeting-place of the Witan was transferred to London, and in the end Godwin and his family were outlawed. Although strictly legal forms were probably followed on this occasion, the composition of the gemot was such that justice could not have been done. The same observation will apply to another witenagemot held in London after Godwin's triumphant return to England, though with a very different result. The earl appeared in person before this assembly, cleared himself easily of all offences laid to his charge, and obtained the outlawry and banishment from England of all the Normans whose pernicious counsels had caused dissension between the king and his people. The Witan frequently acted as a high court of justice, but their judgments resembled rather violent impeachments by an irresistible majority than the calm decisions of a judicial assembly.

Edward's legislation.

In 1051 Edward stopped the collection of the heregeld, a tax levied for the maintenance of the fleet, and disbanded the seamen, which measures were highly popular. Yet at the same time, although he knew that the great nobles and prelates misused their powers over the people, he consented to a law which transferred the jurisdiction in criminal matters from the local courts to the feudal lords in all cases where their dependants were concerned.

Harold and Tostig.

Upon the death of Godwin, in 1053, his eldest surviving son, Harold, was chosen earl of the West Saxons by the king and his Witan. This was equivalent to investing Harold with the practical management of the king and his kingdom; and this power he exercised in the direction of vigorous and just government. Edward also appointed Tostig, Harold's brother, earl of the Northumbrians. Northumbria rose against Tostig because of his harsh government, and a rebel gemot was held at York,

early in the autumn of 1065, which passed decrees in utter defiance of the royal authority. Things came to such a pass that Edward called an assembly together at Bretford, near Salisbury. While professing, probably, to be a witenagemot of the whole realm, it was more likely a meeting of the king's counsellors, or at most of the local witan of Wessex. This assembly proceeded at once to discuss the state of the nation ; and the record of the debates shows that the utmost freedom of speech was allowed in our ancient national councils. Before the king and all his court Tostig vehemently charged Harold with having kindled the Northumbrian revolt ; but Harold denied the charge in the usual solemn form, upon oath. Edward was at last constrained to banish Tostig.

Witenagemot at Oxford.

On October 28th, 1065, a general witenagemot of the whole realm, summoned by the earl of the West Saxons, assembled at Oxford. Failing to effect a reconciliation between Tostig and the Northumbrians, Harold yielded completely, and the irregular acts of the Northumbrian gemot were confirmed by lawful authority. The deposition and outlawry of Tostig, and the election of Morkere, younger son of Ælfgar of Mercia, to his earldom, were legalised. But the shires of Northampton and Huntingdon were now detached from Northumberland, and bestowed on Edward's young son, Waltheof. Another solemn decree was passed, renewing Canute's laws. As, forty-seven years before, Canute had confirmed the laws of King Edgar, so now those of the great Dane were in turn solemnly renewed by the Witenagemot of Oxford, with Earl Harold at its head.[1]

Death of Edward the Confessor.

The last days of Edward the Confessor were his best. In them, under the guidance of Harold and Stigand, Archbishop of Canterbury, he remembered England, and forgot his Norman follies and predilections. He no longer desired that his crown should go to William of Normandy, but named the Englishman Harold as his successor; and on January 5th, 1066, the last king of the

[1] Freeman's *Norman Conquest.*

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house of Cerdic passed quietly away. He was canonised as a saint. Whatever emotions such an act may evoke, Edward will certainly be held in lasting remembrance as the founder of Westminster Abbey. But the Confessor was a monk rather than a king, and he exhibited few or none of the higher aspirations of a ruler.

Laws of Edward.

Edward's laws are described as being enacted by the king, barons, and people.[1] The Confessor rendered great service by collecting the laws and ordinances of the four nations of his realm, which he gathered into one code, with the advice of his Witenagemot. The common law, which of course existed in varying forms long before Edward's day, was thus placed on a durable basis. He granted a number of charters, in addition to that to the Abbey of Westminster. But his so-called "laws" are said to have been formally defined from declarations made on oath by twelve men of each shire in 1070. The Conqueror probably declared that all should live under Edward's law, together with such additions as he had made to it, and a like promise was made by Henry I. in his charter of 1100. The laws thus promulgated signified that the people should enjoy their national laws and customs.

Election of Harold as king.

The members of the Witan, who had assembled at Christmas, and had not yet left London, came together immediately upon hearing of Edward's death. The Assembly was not of one shire or kingdom only, but of the whole realm of England; and it elected Harold, the son of Godwin, the best and most popular Englishman of his time, to the vacant throne. The people of England, in the exercise of their ancient and undoubted right, made their own selection, and on no day in their annals did they "win for themselves a higher or a purer fame." The crown was elective, not hereditary, so that to brand Harold as a "usurper"—which was long done by many writers—is unjust and contrary to fact. Harold, who accepted the crown, and was described as king of the

[1] *A Rege, Baronibus, et Populo.*

Angles and Saxons,[1] was crowned by Ealdred, Archbishop of York, as the canonical right of Stigand, primate of all England, to his see was called in question at this time. The ceremony was a very solemn and imposing one. "If ever there was a lawful ruler in this world, such of a truth was Harold, King of the English, and Lord of the Isle of Britain—king, not by the mouldering titles of a worn-out dynasty, not by the gold of the trafficker or the steel of the invader, but by the noblest title by which one man can claim to rule over his fellows, the free choice of a free people."[2]

His government.

The government of Harold II. was on the whole excellent and judicious. No doubt it had its faults, which were scandalously magnified by Norman writers, but the national historians depict him as the model of a patriot king. "He began to abolish unrighteous laws, to establish righteous ones, to be the patron of churches and monasteries, to reverence bishops, abbots, monks and churchmen of every sort, to show himself pious, lowly, and affable to all good men, and to be the enemy of all evildoers."[3] By the establishment of good and righteous laws we are not to understand Harold as a law giver, but as a law observer; it is his government that is referred to. Harold did all that man could do for his people and country, but perished at the battle of Senlac, or Hastings, after an unsurpassed exhibition of valour, October 13th, 1066. Edgar Atheling, grandson of Edmund Ironside, was chosen as his successor by the Witan of England; but he surrendered his claims to the English throne on consideration of receiving estates and a pension from William. Thus the rule of the Anglo-Saxons closes with the death of Harold II.

Powers of the gemots.

It will have been apparent during this survey that the ancient gemot enjoyed most of the important powers of a modern Parliament, and some powers which later

[1] *Rex Angli-Saxonum*, which is an abbreviation of *Anglorum vel* (or *et*) *Saxonum*.

[2] Freeman's *Norman Conquest*.

[3] Florence of Worcester.

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parliaments shrank from claiming. The king and his witan—not the king alone—concluded treaties, made grants of folkland, ordained the assemblage of fleets and armies, and appointed and deposed the great officers of Church and State. There is little real analogy between the modern House of Commons with its ministerial officials, and the ancient gemots. By the later system of ministerial responsibility all possibility of direct personal collision between parliament and the sovereign is avoided; but in our earlier legislative history, and indeed for several centuries onward from the thirteenth, such direct personal collisions were of frequent occurrence.

The crown and the constitution.

During the time of the Anglo-Saxons—as we may briefly recapitulate—and especially through the brilliant period extending from Alfred the Great to the death of Edgar, the military, judicial, and ecclesiastical organisations were well defined in their several relations to the crown. Take, first, the military system, which was founded on the obligation of all to bear arms, every freeman being supposed to equip himself and to live throughout the campaign at his own cost. There was the *fyrd*, or armed folkmoot of each shire; but the constant wars during the Heptarchy revealed defects and inadequacy of organisation, and the chiefs were obliged to resort to other expedients, such as equipping their own retainers. Under Alfred the larger holders of five hides of land and upwards entered into relations of personal service to the king, while the common freemen were chiefly engaged in the labours involved by the *trinoda necessitas*. Secondly, the legal system was based on the proceedings of the freemen, under control of some self-established superior authority. But through the division of landed property the circle of law-men in the popular courts became narrowed down to a smaller group of proprietors, who may be described as country gentlemen, and who, by their regular attendance and familiarity with the customary law, acquired the distinctive appellation of Witan. The great landowners also formed courts of their own, so that the freeman's security and protection were centred

in the king, the supreme dispenser of justice. The State system implied in the two courts, the hundred-gemot and the shire-gemot, has already been explained. The union of the unattached yeomanry and landless freemen in tithings with a responsible president has also been indicated. The English Church, which was truly national in character, laid the groundwork of legal protection against the sale and maltreatment of women, children, and theowes or slaves. She further secured to the ceorls, or humbler citizens, a day of rest, the right to their own earnings, and a fuller emancipation; she established houses of education; she elevated the position of woman, and regulated marriage upon a moral basis; and she exercised great influence in the administration of justice.

Work of the Church.

Gradually there grew up in England three distinguishing orders—the great thegns, the shire thegns, and the ordinary freemen—while below the last named were the servile class. But for all practical purposes there were only two great orders in the community—the earls and ceorls, or the governing and the governed. With regard to the mode of government, as soon as the Church became actually endowed, and the position of the hierarchy was recognised, a kind of division of authority ensued. Church questions were settled exclusively in the National Council by the ecclesiastical Witan, while the spiritual and temporal lords combined deliberated on matters of a civil and mixed character. The number of persons attending the councils varied; but in a full National Assembly held at Winchester in 934 there were present the king, four chiefs from Wales, two archbishops, seventeen bishops, four abbots, twelve ealdormen, and fifty-two thegns—in all, ninety-two persons.

The communal orders.

The Anglo-Saxon National Council has sometimes been spoken of as a House of Lords, and sometimes as a House of Commons; but it was really neither the one nor the other, and certainly it was far from being a representative assembly in which the public imposts were voted, as in the case of the lower House of Parliament. Among the Anglo-Saxons there was no representation of

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a hereditary class, the nearest members of the royal household being the only persons enjoying hereditary dignity; nor was there any representation of a well-defined class of great landowners. Neither was there any kind of representation in the Witenagemot by popular election, or any trace of a borough representation. As the Witenagemots represented a wisdom that did not combine either the power or the will of the nation, it is not surprising that towards the close of the Anglo-Saxon period they presented a spectacle of internal dissolution. "Whenever," says William of Malmesbury, "the Earls assembled in Council, one chose one thing, another another. They seldom agreed upon any good measure, deliberating rather on domestic treason than on the public needs."

No popular representation.

The judicial system and family life.

But notwithstanding the evidences of general decay, two striking features remained, defying dissolution. The first was the upholding of the Teutonic judicial system, which continued to extend a sheltering arm to personal freedom; and the second was the development of the family life and national character through the national Church.[1]

Privileges of the Anglo-Saxons.

The Anglo-Saxons were by no means destitute of legislative privileges, though they had but a rough and indirect influence. The local meetings, or parliaments, were not without their effect; for through them there came to the bishops, caldormen, thegns, and ceorls of the superior assembly a knowledge of the people's actual condition, their wrongs and demands. Local administration, of course, formed the chief business of the country moots, but these gatherings were a connecting link between the people at large and the central government. The assertion of civil rights by the Anglo-Saxon, however, could make little or no progress in a land which for centuries was only the theatre of war. At any moment he was liable to be summoned from the plough to the battlefield; and it was long before he ventured

[1] *The Student's History of the English Parliament*, by Dr. Rudolf Gneist.

to throw off the chains of servitude, and to claim his rights as a free man.

The old institutions and the new.

Though Coke, Spelman, Camden, and Prynne unanimously agree that the commons formed part of the grand councils of the nation before the Conquest, this view is certainly misleading, for it is impossible to trace to the Saxon period such important characteristics of the modern parliament as the royal summoning, the hereditary principle, and the representative principle. Indeed—while admitting to the full the manifestly free spirit of the Saxon institutions—whatever representative powers our ancestors possessed, they did not at all correspond to the rights and privileges now enjoyed in the Parliament of the United Kingdom. These were of slow growth, and came by much travail and wrestling with sovereigns and the great nobles. The general conclusion of recent constitutional research is that Parliament is "the concentration of all the constituents of the shiremoots in a central assembly."[1] Just as these moots in their ultimate form contained all important folk, clerical and lay, the freeholders and representatives of the townships and municipalities, so Parliament holds within it the component parts of the nation. The machinery of the old institutions, including that useful administrative organisation the county court, were utilised in the evolvement of the new; until Parliament, as we shall see, became in course of time the true embodiment of the national interests. It not only concentrated within itself the elements of the old councils, but passed into an assembly of estates, uniting in one body the clergy, the baronage, and the commons. Legislative power had for centuries been vested only in the clergy and the baronage, but the pressure of circumstances caused the sovereigns of England to widen the bounds of government, until the people came to have a direct and operative share in the making of laws.

[1] Stubbs's *Constitutional History*.

CHAPTER II.

WILLIAM THE CONQUEROR AND THE NORMAN COUNCILS.

The Conqueror becomes King of England.

THE battle of Hastings, or Senlac, settled by force the controversy between the Anglo-Saxons and the Normans as to the right to the English throne. On the accession of Harold, Duke William of Normandy had sent envoys to the new sovereign, asserting his claims to the crown. These claims were based on an alleged deed of gift from Edward the Confessor, and on a formal engagement entered into by Harold in 1065, while on a visit to Normandy, that William should become Edward's successor, and eventually share the kingdom with Harold. No doubt some such concession had been extorted from Harold, and the Norman further outwitted him by obtaining the Papal sanction to his claims. William enforced his asserted rights at the point of the sword; and on the 25th of December, 1066—a little over two months after his crushing victory over Harold—William was elected king of England at Westminster by an assembly consisting both of Normans and Saxons.

Changes resulting from the Conquest.

The Norman Conquest naturally brought with it changes in constitutional government. The new masters of England soon impressed themselves on the national life, and historians are agreed that the effect of the Norman rule was to invigorate the national system, to stimulate the

growth of freedom and unity, and to further the development of the native energies. While William the Conqueror rewarded his followers from the vast estates of Harold and his partisans, he did not dispossess those who had remained neutral during the struggle, or those who submitted to him. The consequence was, that in the outset the Conquest seemed merely to indicate a change of king rather than the subjugation of a people. But troubles arose, and William soon found that his work was only half done. He was called upon to suppress rebellion after rebellion, and it was not until 1070 that his hold upon the kingdom was secure. Fresh forfeitures were now made, the great landowners were largely reinforced from the hosts of the invaders, and the rulers in Church and State were also chosen from the Norman ranks.

English customs continued.

Yet the Conqueror left the laws and customs of the English unaltered. The basis of the political system remained the same, with compurgation, ordeal, view of frank-pledge, fyrd, and witenagemot; while every ordinary Englishman remained in possession of his accustomed rights. William expressly confirmed many of the Saxon laws and usages, but established no Legislative Assembly as we understand the term. In course of time a complete subversion of landed property followed the Conquest, the tenure of land becoming feudalised ; and in framing land laws and other regulations, the new owners legislated for their own benefit, excluding the dispossessed people. Thus some important transformations took place. "The king's court of counsellors was composed of his feudal tenants ; the ownership of land was now the qualification for the Witenagemot, instead of wisdom ; the earldoms became fiefs instead of magistracies; and even the bishops had to accept the status of barons." Among the ultimate effects of the changes were the unity of the State and people ; the establishment of a strong central government; the acquisition of a vigorous legal system; a closer connection between the English Church and Rome, with the aggrandisement of the former ; and the assumption by England of a place amongst European peoples.

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William discourages Feudalism.

William I., so far from himself desiring the triumph of feudalism, discouraged it. It has sometimes been affirmed that the feudalisation of England began with a clause in the so-styled "laws" of the Conqueror, which clause directs that every freeman shall affirm by covenant and oath that "he will be faithful to King William within England and without; will join him in preserving his lands and honour with all fidelity, and defend him against his enemies." This injunction, however, is "little more than the demand of the oath of allegiance which had been taken to the Anglo-Saxon kings, and is here required not of every feudal dependent of the king, but of every freeman or freeholder whatsoever." Moreover, the oath taken at the famous Council of Salisbury in 1086, immediately after the making of the Domesday Survey, was distinctly anti-feudal in character. The oath showed, indeed, that the feudal theory already existed in practice; but it really sought to counteract the disintegrating power of feudalism by "providing a direct tie between the sovereign and all freeholders, which no inferior relation existing between them and the mesne lords would justify them in breaking."[1] William was resolved that in one sense every man should be a king's man, and that there should be no intervening authority with a power to override his own. At the same time, however, while the king claimed authority over the land and the people, intermediate links were established between the body of the nation and the sovereign.

System of Land Tenure.

It is important to note yet further the ramifications of the land tenure under the Conqueror. In place of the countless Anglo-Saxon landowners were the fifteen hundred tenants-in-chief of Domesday. Systematic custom replaced ever-varying arrangements. There was an assimilation of all tenures to the feudal tenure, the king being the supreme landlord. All the land of the nation became his, and all private land was held directly or indirectly of him. To strengthen his position, William

[1] Stubbs's *Constitutional History*.

abolished the great earldoms created by Canute, "and placed the government of the shires, through the office of sheriff, in direct dependence on himself." As a protection against aggression, he gave royal (or palatine) rights [1] to the Earls of Chester, Durham, and Kent. He likewise elaborated the Anglo-Saxon system, enforcing the frank-pledge and upholding the courts of the hundred and the shire.

The King and the Council.

The people at large during William's reign, and that of his immediate successors, had no influence in the government, nor any claim to a participation in the making of laws. The National Council, which succeeded to the Witenagemot, was no longer the Assembly of Wise Men, but the King's Court of feudal vassals ; he became head and source of all jurisdiction as feudal lord, and his revenue was drawn chiefly from feudal aids. By the double check of the inferior organisation and a ministerial body formed within the feudal court itself, William kept a firm hand upon the feudatories. But in order to maintain the double system, he was compelled to use the feudatories; and the latter soon turned their powers against the sovereign. The labour entailed upon the Norman kings was so enormous that a minister was appointed to stand to the sovereign as regarded the whole kingdom in the same relation in which the sheriff did in each shire. This powerful personage was the justiciar. He was

The Justiciar

[1] Palatine counties had wide rights, and sometimes a Parliament of their own. The earl of a county palatine could pardon treasons, murders, etc., and all writs were made out in his name. Those counties which were specially liable to be attacked were made palatinates. The palatine earldom of Chester had its own courts, judges, and staff of officers ; it also had its parliament, consisting of the barons of the county, and was not represented in the imperial parliament until 1541. The counties palatine, except Lancaster and Chester (which were held by the Crown) and Durham, were assimilated to the rest of the country in the sixteenth century. The Bishop of Durham exercised palatine jurisdiction until 1836. The jurisdiction of the palatine courts at Lancaster (save as regards the Chancery Court) was transferred to the High Court of Justice by the Judicature Act of 1873.

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the king's representative in all matters ; regent of the kingdom in his absence, and the supreme administrator of law and finance. Under him as secretaries were the king's clerks or chaplains, the chief of whom bore the title of chancellor. Flambard, a Norman of humble origin, who became Bishop of Durham, was prime minister to William Rufus, and under him the office and title of justiciar assumed definite shape. The justiciar's staff was formed from the barons or vassals of the crown, who were more nearly connected with the royal household, or qualified by their knowledge of the law for the position of judges. These constituted a supreme court attendant on the king, and called the Curia Regis, which, when afterwards employed upon finance, sat as the Exchequer. In the Curia the members were called justices, their head being the chief justice, and in the Exchequer they had the title of barons. The above body formed a judicial committee representing the whole body of vassals, invested with high legal jurisdiction, the only judicial machinery below it being that of the shires, the hundreds, and the local franchises.[1]

The public Councils.

The public assemblies of the kingdom under the Normans were distinguished by the appellations Concilium, Magnum and Commune Concilium, Curia, and Baronagium. The first of these was the king's ordinary Council, consisting of prelates, earls, and barons selected by himself, and assisted by the chancellor, chief justiciar, the judges, and other officers of state. It was not only a council of state, but the supreme court of justice, and met three times every year, at the great festivals of Easter, Whitsuntide, and Christmas ; sometimes at Michaelmas, and at other times also by adjournment.[2] The Magnum Concilium was a larger assembly of persons of rank and property, convened on extraordinary occasions. The Commune Concilium was a still more numerous body, collected together for more general purposes. The Curia

[1] Stubbs's *Select Charters.*

[2] Lords' Report touching the Dignity of a Peer of the Realm.

and the Baronagium were usually convened on an adjournment of the king's ordinary supreme court of justice. They were, in fact, the king's Great Court, constituted differently according to their different functions. The term Curia was consequently applied to them, as it was also to the assemblage collected at the seasons above mentioned, for the purposes of hospitality and royal dignity, and for the administration of justice.

The Curia Regis.

As the constitution and functions of the Curia Regis have given rise to conflicting statements, it is advisable to point out that the name Curia Regis was at different times applied to three distinct bodies: first, to the feudal assembly of the tenants-in-chief; secondly, to the Privy Council, organised under Henry I.; and, thirdly, to the Court of King's Bench, founded in 1178. With regard to the first signification, the Curia Regis combined the characters of Saxon witan and Norman feudal court. It constituted the great court or council of the realm, whose advice the king consulted on questions of State policy, and whose consent was necessary to the imposition of taxation and the enactment of laws. In its presence was undertaken every royal measure of national importance—judicial, financial, executive, and legislative—for as yet these functions of government had not been differentiated. The Conqueror attended its solemn sessions. "Thrice in the year," states the *Saxon Chronicle*, "the king wore his crown whenever he was in England: he wore it at Eastertide in Winchester; at Whitsuntide in Westminster; at Christmas in Gloucester. And then were present all the great nobles of the whole of England, archbishops and bishops, abbots and counts, thegns and knights." In course of time this large body became both too unwieldy and too spasmodic in its action, so Henry I. formed from the royal household an inner council, which became known as the Curia Regis proper. Practically a committee of the first, it was entrusted with the administration generally, legislation remaining with the National Council. The new body was composed of the great officers of state—justiciar, chancellor, treasurer;

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the members of the royal household, constable, marshal, etc.; and a number of clerks, chosen by the crown. The inner council had its different characteristics, such as a Privy Council, a Bureau of Administration, and a High Court of Justice, from which have emanated all the administrative institutions of the kingdom. It was in Henry I.'s reign that the Curia gave birth to the Court of Exchequer, which was organised, or rather defined, by the great justiciar, Roger le Poer, Bishop of Salisbury. From this time the Curia Regis confined itself mainly to judicial work. In consequence of the pressure and importance of this work, Henry II. appointed, in 1178, a separate committee of five judges to hear the pleas of the crown in criminal actions, and this body was to be fixed to one spot. Here we have the origin of the Court of King's Bench. Under Article 17 of *Magna Carta*, the third law court, that of Common Pleas—dealing with civil actions—was established and directed to be held in some fixed place; but it was not until towards the close of the reign of Henry III. that the three bodies were finally constituted with a separate staff of justices for each. The Court of Equity was another legal body springing from the Curia Regis; but it did not take its place among the regular law courts until the time of Richard II. The Curia Regis itself also continued to survive, but, on the accession of the Tudors, its title was merged in that of the Star Chamber. The Privy Council has always retained its ancient judicial competence, though without exercising it. Finally, the Curia Regis, as head of the Executive, was the lineal ancestor of the present Privy Council, and that still more important body in the executive government of the State, the Cabinet.[1]

Revenue and taxation.

The assessment and collection of the revenue under

[1] Hearne's *Government of England*; Stubbs's *Constitutional History*; and the *Dictionary of English History*, edited by Sidney J. Low and F. S. Pulling. With regard to the Privy Council and the Cabinet, these and other matters bearing collaterally upon the subject of the present work will be treated of again at a later period.

the Normans was the work of the Exchequer. The sheriff appeared at the Court twice a year with an account of the sums due from his shire. The *ferm* of the shire—that is, the rent formerly paid in kind or in maintenance—was now commuted for fixed sums, from old public lands and royal demesnes. Then there were the proceeds of the fines of the local courts ; the feudal aids, and other incidents ; the port and market dues ; and the Danegeld. The Danegeld was a tax of two shillings on each hide of land, fixed by the Witenagemot, and first levied in the time of Ethelred II. It was abolished by Edward the Confessor, but revived by William the Conqueror, who in 1084 fixed it at a threefold rate of six shillings the hide. The term "aid" included all customary payments by a vassal to his feudal superior ; but it was specially applied to the forms of taxation employed by the crown from the Norman Conquest to the fourteenth century. Besides embracing the contributions from barons, who were tenants from the crown, and from the tenants of these barons, an aid included the three extraordinary levies of scutage, hidage, and tallage, which together made up the Anglo-Norman scheme of direct taxation. Scutage was the composition in lieu of military service, and it fell properly on the military tenants of the crown alone. But when the king demanded scutage from them, they made up the amount by aid from their tenants. Hidage fell on the freeholders, and it subsequently took the name of carucage, a tax on every hundred acres of land. Tallage was a burden upon the royal demesnes, and it fell chiefly on the towns. Aids were voluntary gifts, and even the villeins—that, is the labouring classes—in order to be taxed were "supposed to join in the grant, if only through the lords and the freeholders, or their representatives in the national parliament. The evolution of a national parliament is, therefore, a logical consequence of the theory of the aid."

Acts of the Conqueror's councils.

Parry, in his *Parliaments and Councils of England*—a work already quoted—publishes a list of twenty-one

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councils held during the reign of William the Conqueror. Among other acts endorsed at these councils, was a charter granted to the city of London, in which the king guaranteed that all the citizens should be law-worthy as in King Edward's day, adding, "I will not endure that any man offer any wrong to you." William also issued an important ordinance, or act, dividing the ecclesiastical from the secular jurisdiction over the clergy, in matters not strictly spiritual. Ecclesiastical questions still continued to be treated by the bishops in their own courts and councils. During the reign of the Conqueror four charters were granted to the Abbey of Westminster.

Composition of the Great Council.

All who composed the Great Council of the realm were included under the general appellation of barons, whether distinguished by ecclesiastical dignities or by that of earl. All ecclesiastics who held possessions of the king, *in capite*, were deemed to hold as barons, and were required, like other barons, to do homage for them, and attend the king's council until it exercised criminal jurisdiction. The earls, before John, were created by patents of the crown, giving a title of dignity, which was not a consequence of tenure of lands. As such they were distinguished from the rest of the barons. In the *Annals of Waverley*[1] the barons who held in chief from the king are distinguished from those styled *terrarii*, who held of mesne lords. The word baron, which has now come to signify the simplest grade in the peerage, originally meant "man," or "freeman." It was first used in England after the Conquest, and the barons of William I. meant all who held lands directly of him—that is, if they held by military service. It was a large body of chief tenants, and a practical division came to be made between the great lords, who had knights holding under them, and the simple knights, who held but their own small estates.

[1] Written in the Cistercian Abbey of that name in Surrey in the thirteenth century.

Madox states that there was a clear legal distinction, "an original difference, between tenure by barony and tenure by knight service";[1] but in the Conqueror's time no such clearly defined principle had been laid down. By the time of Henry I., however, the practical distinction had become accentuated, and eventually the greater baron of the king treated for the payment of his relief and aids directly with the sovereign instead of through the sheriff. He was also summoned to the king's council in his own name by special writ, and not like the lesser barons by a general writ to the sheriff for each shire.

The Baronage.

In Domesday Book[2]—the elaborate survey of England determined upon by the Conqueror after "deep speech" with the great men of the Witan—the greater barons are computed at about four hundred, and the lesser barons at a somewhat smaller number. Both classes decreased by the thirteenth century, but the great barons increased the average size of their estates. In another hundred years they were less than a hundred in number, but they held a vast proportion of the land of England. The clergy and the commons now began to share with them the functions of legislation; but the baronial body still retained separate and independent privileges. They constituted a great part of the standing council, and until nearly the Yorkist period they were called upon to give counsel and consent for legislation, while the commons only had the right of petition. For general administration they were called to treat and give counsel; the commons only to execute and consent. The political history of

[1] Thomas Madox's "*Baronia Anglica:* History of Land Honours and Baronies, and of Tenure in Capite," 1741.

[2] The earliest record reference to Domesday known to Sir Henry Ellis—see his General Introduction to *Domesday Book*—was of the reign of King John; but Mr. Round has identified as belonging to the reign of Stephen an elaborate hidated survey, which possesses a peculiar value from its references to the Domesday survey, by which indeed it seems to have been checked. This is an important addition to our knowledge of the Conqueror's great survey.

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the baronage had three important developments. First came the feudal baronage, whose policy was to curtail the kingly power. This body was nearly eliminated by forfeiture before *Magna Carta*. Its last great representative was Ranulf, Earl of Chester, who died in 1232. Then sprang up, under Henry I. and II., influential men, the precursors of that national baronage which won the Charter, which defeated Henry III.'s plan of personal government, and which finally secured from Edward I. the results of a struggle of a century. The barons in their third stage were devoted to dynastic partisanship, to martial glory, and to personal and family aggrandisements. They were at length almost exterminated during the Wars of the Roses.

William's Government.

I will now endeavour to indicate, partially by way of recapitulation, and partially by way of completion, the constitutional and legislative features of William's reign. The Conqueror began with fair promises. At his coronation by the Archbishop of York, the king, standing before the altar at Westminster, "in the presence of the clergy and people, promised with an oath that he would defend God's holy churches and their rulers, that he would, moreover, rule the whole people subject to him with righteousness and royal providence, would enact and hold fast right law, utterly forbid rapine and unrighteous judgments." But William practically governed alone, and it does not appear that at any of the Conqueror's assemblies, or periodical court-days, held on the three great Christian festivals, those present ever acted legislatively. There are, indeed, no laws extant, dating from the first century of the Norman period, which were framed with the free deliberation of the estates. William I.'s laws are merely proclamations, charters, and official notifications, couched in such language as "the king wills, orders, commands." Partly owing to the pressure of necessity, and partly to the king's iron nature, the government of William ultimately became an undisguised tyranny.

It does not come within the scope of this work to deal

at length with the feudal system which became the most important Norman growth engrafted upon the English constitution ; but some references supplementary to those to be found on a preceding page must be made to it. The word *feudum*, fief or fee, is derived from the German word for cattle, and it has a secondary meaning of goods, especially money ; hence property in general. The institution grew up from two great sources—the beneficium, which was either a gift of land made by the king for faithful service, or the surrender by a landowner of his estates to the Church or to a powerful leader, to be received back again and held by him as a tenant for rent or service ; and the practice of commendation, by which a man, to secure protection, became a vassal to his superior and did homage, without waiving right or title to his estate. There was thus a twofold hold upon the land—that of the lord and that of the vassal ; but a third ingredient was added in grants of immunity, by which the possession of land was united with the right of judicature. The dwellers on a feudal property were placed under the tribunal of the lord. As early as the ninth century the hereditary character of all benefices had been recognised.

The Feudal System.

Immediately after the Conqueror's coronation the process of confiscation and redistribution of lands began. The next few years, occupied in the reduction of western and northern England, added largely to the stock of divisible estates. After every rebellion and conspiracy "the royal hand was laid on more heavily : more and more land changed owners, and with the change of owners the title changed. The complicated and unintelligible irregularities of the Anglo-Saxon tenures were exchanged for the simple and uniform feudal theory."

The ownership of land.

Thus remarks Bishop Stubbs upon this great change, and he goes on to observe that the greatest obscurity prevails upon another important matter—the growth of knighthood in England. Military tenure, it may be said, was almost a necessary concomitant to the establishment

The growth of Knighthood.

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of feudal usages in general; at any rate, it was gradually introduced into this country. The obligation of national defence indeed already existed, but knight's fees were now instituted. Knights bound by feudal obligations to their lords received a definite estate from them. The value of the knight's fee was fixed at twenty pounds a year, but there was no rule as to a definite area of land requisite to constitute a knight's fee. Ordericus Vitalis states that the Conqueror so distributed the land of England that he should ever have at his command 60,000 knights; but this is regarded as a gross exaggeration, modern authorities computing the number at eight or nine thousand.

The Norman court days.

William's royal court, "containing the tenants-in-chief of the crown, both lay and clerical, and entering into all the functions of the Witenagemot, was the supreme council of the nation, with the advice and consent of which the king legislated, taxed, and judged."[1] Technically, this was so; but although the summons to court was addressed to nearly the same prelates, counts, court functionaries, and lords as in the case of the Anglo-Saxon witenagemots, what was wanting to such court days, as Gneist reminds us, was a real control over the affairs of State. Yet, judging from the letter and not from the spirit of his legislation, William undoubtedly acted with the advice of his council. The act of the Conqueror which removed the bishops from the secular courts and recognised their spiritual jurisdictions was passed "with the common council, and counsel of the archbishops, bishops, abbots, and all the princes of the kingdom." An ancient summary of William's laws which has been preserved is entitled "What William King of the English with his princes enacted after the Conquest of England";[2] and the same form is maintained in his traditional confirmation of the ancient laws reported to him by the representatives of the shires. The *Anglo-*

[1] Stubbs's *Select Charters*.

[2] *Textus Roffensis*, a manuscript written during the reign of Henry I.

Saxon Chronicle particularly specifies, according to their rank, the persons attending the king's Great Courts: "there were with him all the great men over all England, archbishops and bishops, abbots and earls, thegns and knights."

Council of 1072.

In the year 1072 a general council, curia, or county court,[1] was held on Pennenden Heath, Kent, to try the great suit between Lanfranc, as Archbishop of Canterbury, and Odo, Bishop of Bayeux, as Earl of Kent. The Archbishop, who had seized upon the rights of the church at Canterbury, pleaded his cause in a session of three days; and the aged South Saxon bishop, Ethelric, attended under summons from the king to declare the ancient customs of the laws. Other Englishmen skilled in the ancient lore were also present, and judgment was given for the archbishop. The decision was agreed upon by the whole county, asserted by the whole kingdom, *totius regni assensu*, and subsequently confirmed by the king. The presence of the Norman justiciar and barons, in addition to the ordinary machinery of the court, as well as the sanction of the king, gave the tribunal a greater judicial authority.

William the First's income.

The income of the Conqueror was very large, for he not only retained the revenues of his predecessors, but added new imposts of his own. In taxation he favoured his general principle of amalgamating Saxon and Norman customs. As shown in Domesday, the royal lands produced nearly £20,000, and the Danegeld imposed in 1084, if levied from two-thirds of the hidage of the kingdom, would yield as much more. There were besides the profits of jurisdictions, and other miscellaneous items; so that in all probability William's revenue amounted to quite £50,000. No class was left untaxed; all men had a distinct relation to the king over and above the relation to their lords.

[1] Selden says a general council or parliament; Parry says a curia; and Stubbs says a county court. Whatever the name, it is evident that the presence of the bishops, the barons, and the great men o the kingdom generally, constituted the assembly a Witenagemot.

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The Conqueror's ordinances.

The genuine legislative acts of the Conqueror were few in number. Besides the ordinance for separating the ecclesiastical from the ordinary courts, there was an ordinance against the slave trade, wherein, however, the king merely re-enacted what other rulers had enacted before him. There was also an ordinance by which the king altogether forbade the punishment of death, but this change only lasted during William's lifetime. The forest laws of William, though a distinct innovation, were not formally embodied in an ordinance. There were certain ordinances of a merely temporary character; and among the customs which came in during his reign was that of deciding causes by wager of battle. The Englishman, however, was still left his choice of the Saxon ordeal by water or iron, etc.[1]

His ecclesiastical policy.

The ecclesiastical policy of William is a matter of considerable interest. There were two great churchmen in his reign, Lanfranc and Gosfrid, the latter being Bishop of Coutances. Lanfranc was both statesman and theologian, and opportunist to boot, for he "sacrificed neither the State to the Church nor the Church to the State." He worked in agreement with the king, seeking to establish harmonious relations between the Saxon and Norman elements. Gradually most of the English sees were filled with Normans, and England was brought into closer relationship with the Church of Western Christendom, and consequently with Rome. But, notwithstanding, William and Lanfranc maintained the independence of the English Church against the encroachments of Rome.

[1] The ordeal continued to survive until 1218, when a letter, addressed by Henry III. to the itinerant justices, finally extinguished it. The Norman custom of wager by battle was greatly disliked by the English, and among the privileges frequently granted to burgesses in borough charters was one exempting them from trial by battle. As late as 1817 one Abraham Thornton, being on his trial for murder, demanded a trial by battle, and on the refusal of the prosecutor to accede he was discharged. In 1819 wager by battle was abolished by Act of Parliament.

Separation of legal and ecclesiastical jurisdiction

The Act of William separating the Church jurisdiction from the secular business of the courts of law was the most important ecclesiastical measure of his reign. By it the bishops and archdeacons were no longer to hold ecclesiastical pleas in the hundred-court, but to have courts of their own; they were to try causes by canonical and not by customary law; no spiritual causes were to come before laymen as judges, and laymen were expressly forbidden to interfere in them. The consequence of the separation of the spiritual and secular courts led to a rapid growth of the canon law, and a significant change in the position of the clergy. The papal court came to be recognised as a tribunal of appeal, the legatine administration was greatly extended, and the clergy became to a large extent independent of the common law of the land, claiming exemption from the temporal tribunals, and by appeals to Rome paralysing the regular jurisdiction of the diocese. But in William's own time the supreme executive power of the sovereign over his people extended fully to the clergy. The king would not tolerate any provisions of the clergy in their synods in opposition to his pleasure; neither would he allow the excommunication of any of his officers by the Church without his sanction, or permit any papal legate to set foot on English soil without his permission.

Character of the Conqueror's rule.

A survey of William's reign shows that while national and constitutional forms were permitted to exist on sufferance, the government was despotic. It was the rule of the strong man, but of one who was far-seeing. Under him the nation began its apprenticeship to suffering, and if all constitutional aspirations seemed to be stifled beneath his rule and that of his immediate successors, it was only that they might be resuscitated at a later period, when there was greater hope of their attaining fruition through an enlarged experience.

CHAPTER III.

THE LATER NORMANS AND THE CONSTITUTION.

Accession of William Rufus.

THE reign of William Rufus, third son of the Conqueror and Matilda of Flanders, was one of the most oppressive and disgraceful in our annals. Representative institutions made no progress under this cruel and exacting monarch. William I.'s second son, Richard, had been killed in the New Forest, but the eldest son Robert still lived, and most of the barons would have preferred him to Rufus; but the Conqueror, when upon his death-bed, named William as his successor, and it is said that he even gave his favourite son a letter to Lanfranc to that effect. For a time the primate was undecided between the two brothers, but at length he secured the crown for William, upon these conditions—that he should swear to maintain justice and mercy throughout the kingdom; to defend, against all, the peace, freedom, and security of all churches; and to comply with his instructions and counsel in and through all things. Rufus readily took the required oaths, and was crowned at Westminster, as William II., on Sunday, September 26th, 1087.

Sketch of his reign.

In a very short time a powerful section of the nobles—led by Odo, Earl of Kent, Roger, Earl of Shrewsbury, and William of St. Carileph, Bishop of Durham—took up arms against William, with the object of reuniting England and Normandy under Robert, who had succeeded

to the Duchy. Acting on the advice of Lanfranc, the king threw himself on the support of his English subjects, solemnly promising them better laws, lighter taxation, and other benefits. They accordingly flocked to his standard, and the revolt of the nobles was crushed. William forgot his promises, however; and after the death of Lanfranc, in 1089, his career was one of uncontrolled selfishness and wanton tyranny. He despoiled the Church; but in Anselm, the distinguished Archbishop of Canterbury appointed in 1093, he found a courageous and unbending foe, who denied his ecclesiastical authority, and was at length driven into exile. Freed from his powerful adversary, William pursued his tyrannical course unchecked, his chief instrument and adviser being the notorious Ranulf Flambard, the Justiciar. The Danegeld was continued; the *fyrd* of the kingdom was ignominiously disbanded in 1094; every method that ingenuity could suggest for extorting money was adopted; the harsh forest laws were mercilessly enforced; and the nobility of the Conquest were decimated by forfeitures. William warred successfully against Robert, and then combined with him to despoil Henry. The arrow which accidentally killed William Rufus in the New Forest, August 2nd, 1100, delivered England from an irreligious and unprincipled monarch, and one whose mental gifts far transcended his moral character.

Its constitutional import.

It has been well remarked that, although the reign of William Rufus contained no great constitutional landmark, "it witnessed the ripening of the causes which were producing the death-struggle of the royal and feudal powers"; and it "affords a few slight indications of the continuity of the national institutions, which were enabled by that contest to take breath between the successive strokes of their tyrants, or were even occasionally utilised by the king, as possessing interests for the moment in unison with his own."[1] William issued several constitu-

[1] *Select Charters.*

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tional manifestoes, but he never observed them; and he likewise held a number of councils, but they were by no means free assemblies. He also built old London Bridge and Westminster Hall, but even these noble works were complained of as burthens grievous to the people. As to the general character of this monarch's government, "the laws of England, the decrees of her Witan, the utterances of her earls and bishops, had sunk to be only the mouthpieces of the arbitrary will of her foreign oppressor."[1] Under these circumstances, it is perhaps not surprising that Anselm appealed from the king to the Pope, and thus paved the way for those submissions to the authority of Rome against which later generations of Englishmen sternly protested, as their ancestors had done before them.

The succession to the Crown.

The treaty of Caen, which was concluded in 1091 between William and Robert, has certain important constitutional bearings. Under it Robert renounced his claim to England, and was allowed to retain his capital and the greater part of his duchy; but Cherbourg, Fécamp, St. Michael's Mount, and other places were surrendered to William. The latter engaged to win back for Robert whatever possessions of their father were not by the treaty especially assigned to himself. It was further stipulated that, on the death of either prince without lawful issue, the whole of his dominions should pass to his surviving brother. Not only was Odo shut out from the benefit of the treaty, but Henry was excluded. As Mr. Freeman observes, "the rights of the Witan of England, none the less legally valid because they were now practically exercised by men of Norman birth, were signed away by a clause which cut them off from their free right of choice on the death of the reigning king. That clause, too, specially shut out the one member of the reigning family (Henry), who by the law of England had a claim to any special preference at the hands of the electors." William's

[1] Freeman's *Norman Conquest.*

attempt to settle the succession was fruitless, "but the agreement none the less points to the growth of certain political ideas which were at this time struggling into being." These ideas fostered the notion of property in the crown of England, and consequently encouraged the doctrine of hereditary succession, a doctrine "which was in the end utterly to supplant the elder Teutonic notion of the kingly office."[1] At the same time, a new consideration entered into the royal succession, increased importance being attached to legitimate birth.

Election of Henry I.

On the death of William Rufus, his younger brother, Henry, acted with the utmost promptitude. Hastening to Winchester from the New Forest, he seized the royal treasure in the castle, and put forward his claims to the crown. William of Breteuil stood forth in behalf of Robert, but he was overruled by the other barons, and Henry was elected king, chiefly through the influence of the Earl of Warwick. As his first act he bestowed the vacant see of Winchester on William Giffard, the Chancellor, and then proceeded to London, where he was crowned on Sunday, August 5th. The ancient oaths taken by Ethelred were subscribed by Henry I., who gave the threefold promise of peace, justice, and equity. A comprehensive charter of liberties was published, and Anselm was recalled. In his letter to Anselm the king stated that he had been chosen by the clergy and people of England. Moreover, his undertaking to govern was made not only with the archbishop as the first constitutional adviser of the crown, but with the whole nation. The charter in which it was embodied was addressed to all the faithful, and attested by the signatures of the Witan.

His Charter of Liberties.

Its provisions.

Henry's charter of liberties is of considerable constitutional interest. "Know ye," it set forth, "that, by the mercy of God and the common counsel of the barons of the whole realm of England, I have been crowned

[1] *Norman Conquest*, vol. v.

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king of the same realm." After repudiating and forbidding the abuses of the late reign, the Church was made free from all unjust exactions, and the kingdom from evil customs; the laws of King Edward, with the Conqueror's amendments, were restored to the English people; the feudal innovations, inordinate and arbitrary reliefs and amercements, the abuse of the rights of wardship and marriage, the despotic interference with testamentary disposition—which had been too common in the reign of Rufus—were renounced; and the demesne lands of tenants by knight service were freed from all demands except service in the field. Peace and good coinage were promised to the whole nation; and the debts due to William Rufus, as well as the murder fines incurred before the day of coronation, were forgiven. Henry retained the forests, however, in his own hands, as his father had done before him. But the charter considerately provided that the benefit of the feudal concessions should not be entirely absorbed by the tenants-in-chief. "In like manner," thus ran the document, "shall the men of my barons receive their lands at the hands of their lords by a just and lawful relief"; and again, "in like manner I enjoin that my barons restrain themselves in dealing with the sons and daughters and wives of their men."[1] Henry thus guarded the rights of those who had taken the oath of fealty to the Conqueror at Salisbury, and he further endeavoured to show that he intended to rule as an English king by punishing Flambard, and uniting himself in marriage to Edith, daughter of Malcolm Canmore and niece of Edgar Atheling.[2]

Henry's policy.

But he was soon called upon to encounter Duke Robert, who invaded England. Peace was restored for a time, and Robert returned to his duchy; but the quarrel

[1] Sir Henry Spelman, in his *History of English Councils*, observes that the Charter of Henry I. was the original of *Magna Carta*, containing most of its articles, either particularly expressed or generally included.

[2] Stubbs's *Constitutional History*.

broke out again, and Henry several times crossed over to Normandy. Robert was finally worsted at Tenchebrai in 1106, and was imprisoned from that period until his death, his victorious brother taking possession of his duchy. Henry also addressed himself to the task of securing order and good government in England, by restraining the independence and extortion of the barons. The English estates of many of the great families of the Conquest were confiscated. To the unfeigned joy of the English, Robert of Belesme, son of the Conqueror's friend Roger of Montgomery, and the most powerful of the Norman nobles, was completely defeated and despoiled.

His administrative acts.

Henry did much towards establishing his throne as an English throne. He was a sagacious administrator, and secured the support of the clergy and the people. He restored the working of the local courts, the hundred and the shire, as they had been in King Edward's time. He granted to the towns such privileges as in the awakening of municipal life they were capable of using. He maintained good peace by severe and even-handed justice; and by conciliating the Church, he won to his side the most stable element of national life. Perceiving that feudalism was an impossible system of government for England, Henry created a strong administrative body in connection with the crown, and in this he was assisted by his justiciar, Bishop Roger of Salisbury, "who acted throughout the reign as the great constructor of judicial and financial organisation." Important steps were made towards a safe constitutional system; and the new administrative families which arose furnished the sheriffs of the counties, the barons of the exchequer, and the justices of the Curia Regis. The new body were employed by the king to make circuits round the country, not only for the purpose of assessing and collecting taxes, but also for redressing abuses. But Henry's strong government cost money, and there were murmurings against his taxation, which was not so much burdensome by its weight as by its relentless incidence. From 1103 onwards serious complaints were heard, yet the taxation

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was necessary to save and consolidate England. Ordericus says that Henry "never fell away from his first strength and sternness of justice; the peaceful, the religious, the mean people he at all times kindly cherished and protected." He was regarded as the "Lion of Righteousness" of Merlin's prophecies, and William of Malmesbury adds that "he kept his native people in quiet, and his barons according to their deserts."

Ecclesiastical policy.

With regard to his ecclesiastical policy, Henry made certain concessions to Rome and to the clergy. But while ecclesiastical councils might be held when the archbishop chose, the king's consent must be obtained before the assembly could meet or exercise any legislative power; and although papal jurisdiction was not excluded, no legate might visit England without royal licence.

Councils.

Henry held a considerable number of councils or curias, and at one of the later assemblies he required the members to renew their oath of fealty to his daughter Matilda, and to bind themselves to recognise the right of her infant son to the Crown after his own decease. In May 1127 a council was held at London, and at the same time the Archbishop of Canterbury held a "synod" or council at Westminster. According to one authority, this was the first ecclesiastical council that had been held at the same time with a convention of the nobility, and yet in a separate place.

Charters.

"Henry I. was not a lawgiver," says Dr. Stubbs, "nor did he entrust the national council with any freedom of legislative action. His relations with the barons, the clergy, and the people, rendered this impossible. His charter of liberties remains the sole legislative act of his reign, for the Costumal known as the Laws of Henry I. is a compilation of later date. But there are considerable evidences of judicial and administrative activity in the numerous charters of the reign, and in the valuable record of Exchequer proceedings known as the Pipe Roll of the 31st of Henry I." Through the exertions of Anselm, ecclesiastical liberties were asserted, and a check began to be placed on the royal power. The clergy

resisted arbitrary taxation, assisted in perpetuating the idea of freedom, and furthered the creation of "a class of politicians springing from the people, trusted by the sovereign, and sincerely interested in the maintenance of law and peace."

Independence of London.

A charter granted by Henry I. to the citizens of London demonstrates the fact that, while other towns were just struggling out of the condition of demesne, Londoners were put in possession of the ferm or farm of Middlesex, with the right of appointing the sheriff. They were freed from the immediate jurisdiction of any tribunal except of their own appointment. They had also their separate franchises secured, and their weekly courts, but they had not yet the character of a perpetual corporation or communa —that is, a compact organisation as a municipal body.

Stephen proclaimed king.

On the death of Henry I. Stephen caused himself to be proclaimed king, although he had taken the oath of fealty to his cousin Matilda, or Maud, only daughter of Henry, and wife of Geoffrey of Anjou. Geoffrey was her second husband, her first being the Emperor Henry V., by whom she had no issue. Stephen was the third son of Stephen, Count of Blois, and Adela, daughter of William the Conqueror. The great unpopularity of Geoffrey of Anjou with the Norman barons materially contributed to Stephen's success. After the new monarch's coronation, at Christmas, 1135, a general council met at Oxford, when the king granted an extensive charter, wherein, *inter alia*, the rights and immunities of the Church were secured to the whole body of the clergy. It was witnessed by the bishops, the Chancellor (Roger, Bishop of Salisbury), the king's nephew Henry, four earls, Robert de Vere, and fifteen barons. This was the second charter of Stephen, the first being only of a formal description.

His misgovernment.

Stephen began well, and, according to Henry of Huntingdon,[1] promised the clergy entire freedom of

[1] *Historia Anglorum*, a work which concludes with the reign of Stephen.

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election, and to the people the abolition of the Danegeld. But these hopes were soon blasted, and a reign of fearful misgovernment ensued, in which the excesses of the feudal system were seen at their worst. The king's arbitrary bearing towards the Church and the officials of the administration speedily alienated his friends; and in 1138 Maud invaded England in company with her brother, Robert of Gloucester. War, degenerating into anarchy, prevailed for many years. Barons and bishops who had hitherto desired only constitutional courses threw off their allegiance and prepared for civil war. Stephen endeavoured to crush the feudalists by arresting two leading prelates, Roger the Chancellor, and Alexander, Bishop of Lincoln, while Nigel, Bishop of Ely, was driven from the realm. Contemporary chroniclers give a painful picture of the excesses which ensued. The feudal party fought for their own hand, the baronage as a body favouring neither Matilda nor Stephen. The contest was thus prolonged with varying advantage, the people being the greatest sufferers. The constitution was practically suspended during this long struggle; but at length, in 1153, a peace was concluded between Stephen and Prince Henry of Anjou, son of Matilda. This peace is known as the Treaty of Wallingford, but only the preliminary negotiations took place at Wallingford, the treaty itself being signed at Westminster. It was arranged under this treaty that Stephen should retain the kingdom during his lifetime, but that Henry was to succeed him, the rights of Stephen's children to the private domains of their parent being guaranteed. A scheme of administrative reform was further decided upon, which was intended to restore things as far as possible to the state in which they had been left by Henry I. The terms of this pacification, which were intended to bind both Stephen and Henry, included the abolition of the late evils, the razing of the castles, reform of the coinage, replacement of the sheriffs, the resumption of the crown lands, the extinction of the new earldoms, the banishment of foreigners, and the restoration

Treaty of Wallingford.

of justice and the national prosperity. Stephen survived the conclusion of the treaty but a short time, for he died at Dover Priory on Oct. 25th, 1154.

According to the most credible historians, the National Councils were intermitted during the whole almost of Stephen's reign ; and from some time in the fourth year after his accession the three solemn assemblies even of the Curia Regis ceased.[1] It is true, however, that during this and the preceding reigns there did exist some legal constitution of a government, of which a legislative council (for some purposes at least) formed a part ; and all impositions and exactions by the mere authority of the crown, not warranted by the existing law, were particularly reprobated as infringements of the just rights of the subject. But at the same time the existing law left a large portion of the king's subjects liable to tallage imposed at the will of the crown ; and the tenants of the mesne lords were in many cases exposed to similar exactions.[2] To such a pass had the English Constitution come, that at the Council of Westminster, in 1138, a papal prelate promulgated sixteen canons, and took into his own hands the conduct of the elective act for appointing to the archbishopric of Canterbury. In the course of a few years the papal chair became the court of appeal for all contending factions.[3]

Cessation of the National Councils.

Council of Westminster.

The general political condition of England at the close of Stephen's reign was certainly very deplorable ; and yet on the whole the Norman Conquest had been of great value to the country. The researches of all our modern historians confirm the conclusion of Gibbon that England was "assuredly a gainer by the Conquest." While strengthening the English spirit, the new movement insured the continuity of English history. Touching her external relations, England under the Normans became,

Political bearings of the Conquest

[1] Parry mentions ten or twelve councils, but some of them were not called by Stephen.

[2] Report on the Dignity of a Peer.

[3] Gneist's *History of the English Constitution*, vol. i.

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instead of an insular state, one of the chief powers of Europe. William I. also strengthened the kingly power; and while his policy was unquestionably despotic, he as unquestionably, by asserting his personal authority, "preserved the ancient laws and liberties of England, and handed them on as a heritage for ever."[1]

Norman legislation.

As regards the legislation of the strictly Norman kings, the changes it effected in the law were few and of no great importance. It is inaccurate to say that Norman law was substituted for English, and it would be difficult to define what Norman law actually was, either before or during the rule of the Conqueror. Speaking generally, there was no real derivation of English law from Normandy, and the administrative and legal systems "grew up in both countries side by side." English institutions were naturally modified by Norman customs and influences, and that is the utmost we can say. Touching the rights of the people in the election of the sovereign, the citizens of London and Winchester in the time of Stephen made good their ancient claim to a voice in the choosing and deposing of kings. The character of the national assemblies became, for a time, mainly Norman, through the pressure of the foreign elements; but there was no actual law precluding Englishmen from the work of administration or legislation; and in course of years the Norman element or predominance faded into the English proper, so that "a Parliament of Edward the First was as truly an English assembly as a gemot of his sainted namesake."

Constitutional parallels.

The three elements in the national assemblies which began to be distinguished during the Norman times—namely, the Witan, the land-sitting men (who developed into the tenants-in-chief of the Great Charter), and the citizens of London and Westminster—who made, it is true, but a fitful appearance—furnish "the germs of the three great elements in our later Parliaments, the peers,

[1] For a full and admirable demonstration of these and other points see Freeman's *Norman Conquest*, vol. v.

the knights of the shires, the citizens and burgesses." With respect to the position of the English Lords Spiritual, Mr. Freeman points out that "when King William held his gemot, and Lanfranc directly after held his synod, the prelates who took part in both assemblies were then, as now, members at once of the upper House of Parliament and of the upper House of Convocation." The bishops did not sit in Parliament simply because they held baronies, but as an order of Englishmen possessing an immemorial right. It is true that their baronies enabled them to retain that right when others lost it, and they sat in the Parliament of England, "in their old character of Witan of the land, as an integral part of the same House as the earls and barons of England." The right of impeachment by one house before the other was one of the oldest of constitutional privileges. It is "not likely to be put in force again in our days," yet it "has been acted upon within the present century, and has never been formally abolished." One important point to note, in connection with the growth of popular privileges, is the strengthening of the great towns of England by the Conquest. Numerous charters are extant showing the special privileges of certain towns, and these distinctly point to the extension of one significant form of freedom. Personal slavery in England also died out under the Norman rule, and slaves were gradually raised to villeinage. Technically, however, slavery was not abolished in England, but it passed into desuetude before the new conditions of society: so also with villeinage, it was never legally abolished, but "went out by the gradual emancipation of the villeins."

Legislative progress.

As the Anglo-Saxon polity marked the first stage in the legislative history of England, so the Anglo-Norman polity marked the second; and it will now be my endeavour to show how a third series of constitutional changes and struggles, extending from the reign of Henry II. to that of Edward I., resulted at last in the summoning of a Parliament truly representative of the whole of the English nation.

BOOK II.

EARLY ENGLISH PARLIAMENTS.

A.D. 1154 TO 1399.

CHAPTER I.

HENRY II., THE LAWGIVER.

Accession of Henry II.

UNDER Henry II., the first of the Angevin kings, or Plantagenets, distinct advances were made in the constitution. Henry was crowned at London on December 19th, 1154, when a convention was held of the archbishops, bishops, earls, and barons; and there were also present at the coronation "an immense multitude of people." This monarch's rule initiated the sovereignty of the law. For the first ten years of his reign the king devoted himself to the restoration of the great administrative system of his grandfather, Henry I. Then from 1164 to 1170 he was engaged in the fierce controversy with Archbishop Becket. The period from that prelate's death to the death of the younger Henry, in 1183, witnessed another stage in his government; and the last period of Henry II.'s protracted and important reign, terminating with his own death in 1189, was marked by much vicissitude at home and abroad.

His character and policy.

Henry II. was a sagacious sovereign, and one admirably adapted to the time, as well as a born administrator; and he adopted a thoroughly English policy of government. He issued a charter of liberties, which, while simply a confirmation of that of his grandfather, "would naturally be construed to cover any reforms carried out on the principles set forth in that charter, such as the fixing a reasonable sum for reliefs, and the administration of

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justice in the country at large through visitations of the Curia Regis." With the aid of Theobald, Archbishop of Canterbury, Thomas Becket, the Chancellor, and the Earl of Leicester, he proceeded to carry out the plan of reform dictated by the Peace of Wallingford ; recalled the Bishop of Ely to the Exchequer ; and resumed those estates of the Crown alienated by Stephen and Matilda. He demolished the illegal castles which had been the strongholds of baronial tyranny, restored good government amongst the people, reformed the coinage, and prosecuted the war of Toulouse. At a general council held at Easter 1155, the king's two sons, William and Henry, were declared his heirs, and at a council held at Worcester three years later, Becket the Chancellor, and the bishops and abbots of all England, did fealty to Prince Henry.

The great Scutage.

The war of Toulouse had an important fiscal bearing upon England as regards the great scutage. This tax was first imposed in 1156, when a charge of twenty shillings was made on the knight's fee, upon all holding estates from churches. Archbishop Theobald in vain protested against it. But when Henry called his chief lords to serve in the war of Toulouse, in 1159, two marks were taken from every knight's fee in lieu of personal service; and henceforth the lower tenants were allowed to commute their service for sums payable to the royal treasury under the name of scutage, or shield money. This great scutage did much to disarm the baronage, while it enabled the king to hire foreign mercenaries for his service abroad. It was a very important anti-feudal measure, and has been compared in its general policy with Edward I.'s distraint of knighthood. It was further levied by Henry in 1171, and again in 1186, each time at twenty shillings on the knight's fee.[1]

Searching reforms.

Henry's judicial, fiscal, and legislative reforms were searching and effective. He greatly extended the system

[1] *History of the English People*, by John Richard Green, vol. i.; and Stubbs's *Constitutional History*.

of inquest by jury, "which superseded the old processes of trial by battle and compurgation, and led by no indistinct steps to the incorporation of the machinery of the shire and of the borough in the national council or parliament." The jury system existed in an indefinite form long before this period, but Henry II. gave to it its distinctive and permanent features. By the Assize of Arms, in 1181, Henry revived the ancient militia system, or fyrd, which enabled him to dispense with the military services of the barons for the maintenance of order at home. He also reorganised the forest laws, and by his Assize of the Forest, in 1184, a third offence was declared to be capital.

The National Council.

Henry enlarged the national council, and summoned it at regular intervals, twice or thrice in the year. The council transacted political, fiscal, legislative, and judicial business, and the nation was in theory consulted in every public matter, even taxation being permitted to come into debate. The King sat in person to hear the complaints of his people, and decided them by the advice of his bishops and judges. Records of more than thirty great councils held by Henry II. have been preserved.

Judicial developments.

Some of the judicial changes effected by this monarch have been referred to in a previous chapter; but it may be added here, with regard to the Curia Regis, that Henry reserved for his own hearing in council the causes in which it failed to do justice. The upper court of appeal thus formed, consisting of king and council, "is the body from which at later dates the judicial functions of the Privy Council and the equitable jurisdiction of the Chancellor emerged. It is this council which, in conjunction with the elements of Parliament, summoned to meet, but not under the proper parliamentary style, constitutes the Magnum Concilium of the next century; from the mixture of whose powers the House of Lords received its judicial character as a court of appeal, and the Privy Council derived its legislative character, which it attempted to carry out in

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the form of ordinances."[1] In improving and expanding the system of recognitions by jury, Henry applied the machinery to every description of business. Out of the Grand Assize and other recognitions sprang the whole modern system of trial by jury.

Henry's quarrel with Becket.

Henry's resolve to subject the Church as well as the State to the supremacy of the law, brought him into serious conflict with Becket, who had been appointed Archbishop of Canterbury in 1162. The immunities of the clergy in regard to criminal offences had become a positive hindrance to public justice, and the king determined that all should be equal before the law, priests as well as barons. The clerical order was a very large one, embracing the whole of the professional and educated classes; and it was subject to the jurisdiction of the Church courts alone, which had come to inflict only spiritual punishments. While preserving the jurisdiction of the Church courts, the king desired the delivery of convicted offenders to the secular arm. Becket resisted, but Henry held firm, and the customs of the realm being appealed to, a great council was held at Clarendon, near Marlborough, in 1164.

Constitutions of Clarendon.

The Constitutions of Clarendon, which were the outcome of this council, form an important legislative landmark, for they definitely regulated the relations of the Church with the State.[2] The ecclesiastical courts, which had been separated from the national courts by William the Conqueror, had extended their powers and jurisdiction to a formidable degree; but now that justice was again fairly administered in the civil courts, while it frequently failed from inability or lack of will in the ecclesiastical, it was absolutely necessary to demonstrate the supremacy of the State over clergy and laity alike. There were also such important questions to settle as advowsons, appeals, excommuni-

[1] Stubbs's *Select Charters.*

[2] Most of the claims now formulated, however, had been likewise asserted by some of Henry's predecessors

cations, and the election to bishoprics; and on all these points the Constitutions gave forth no uncertain sound in maintaining the rights of the Crown. The provisions were drawn up by a committee of bishops and barons—the Justiciar, Richard De Lucy, and Jocelin de Bailleul, a French lawyer, having the chief hand in them. They were no mere engine of tyranny or secular spite against a churchman, but were really part of a great scheme of administrative reform. The Constitutions were sixteen in number, and their purport was as follows: 1. Controversies respecting advowson, or presentation to livings, to be tried in the king's court. 2. Churches in the royal demesne not to be given away in perpetuity without the king's leave. 3. Clerks accused of civil offences to appear in the king's court, and there claim the benefit of clergy. 4. No archbishop, bishop, etc., to leave the realm without the king's consent. 5. Excommunicated persons not to give excessive bail. 6. Laymen not to be accused, save by certain legal accusers and witnesses, in presence of the bishop. Failing such accusations, the sheriff shall cause twelve lawful men of the district to swear before the bishop that they will declare the truth in that matter according to their conscience. 7. No tenant-in-chief to be excommunicated or to have his lands put under interdict without the king's leave. 8. Appeals shall be from the archdeacon's court to the bishop, from the bishop to the archbishop, and no further —to wit, to Rome—without the king's leave. 9. Disputes between clergy and laymen as to the tenures of fiefs shall be settled by the declaration of twelve lawful men. 10. Persons refusing to appear before the ecclesiastical courts shall not be excommunicated till an officer of the king has made inquiry. 11. Archbishops, bishops, etc., shall hold their possessions of the king as baronies, and answer for the same to the king's justices, and do suit and service, and observe all the king's customs, except in cases of life and limb. 12. When an archbishopric, bishopric, etc., in the royal demesne shall be vacant, it shall remain in the king's hand, and he shall

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receive from it all the revenues and proceeds. 13. If any of the barons refuse justice to an ecclesiastic, the king shall give him justice. 14. The chattels of those who are in forfeiture to the king shall not be detained in a church or churchyard. 15. All pleas concerning debts are to be tried in the king's court. 16. The sons of villeins are not to be ordained without the consent of their lords. With reference to these provisions, the appointment of a jury in clause 6, and the recognition of the same principle in clause 9, are the earliest instances of such mention in anything like statute laws, though the actual practice doubtless prevailed long before this date. But while this great boon thus receives the stamp of law, on the other hand clause 16, which deals with the ordination of the sons of villeins, "is probably the first disqualifying provision to be found in any English statute."[1]

Stormy Council at Northampton.

The Constitutions, tending as they did to destroy all clerical immunities, were extremely unpalatable to Becket. For a time he refused his assent to them, but, owing to the entreaties of his brethren, he at length set his seal to the provisions. Then he retracted his assent, and besought the Pope to pardon him for having betrayed the interests of the Church. In the ensuing October the Primate was summoned to a council at Northampton —not, as was his right, by writ issued specially to him as the first counsellor of the crown, but by a common summons addressed to the sheriff of Kent, ordering him to cite the archbishop to answer the claims of John the Marshal. The council was a very stormy one, and Becket was overwhelmed by the king's demand that he should produce the accounts of the Chancery, and by the charges of his enemies. He appealed to the constitutions of the papal see, and being greeted with cries of "Traitor!" fiercely replied, "Were I a knight, my sword should

[1] Stubbs's *Constitutional History* and *Select Charters;* Freeman's *Norman Conquest;* Green's *History of the English People;* Becket, *A Biography,* by Canon Robertson; and the *Dictionary of English History.*

answer that foul taunt!" But, despairing of justice, and fearful for his life, he fled beyond the seas, and the king took possession of his temporalities.

Flight of Becket.

Henry was now occupied, for a time, first in Normandy and subsequently in Wales; but early in 1166 he held a council of the clergy at Oxford. This was followed by a great assembly of the bishops and baronage at Clarendon, when it is said that an oath was exacted from the bishops that they would not appeal to the pope. The king, continuing his work of constructive reform, established a new judicial system by the Assize of Clarendon, 1166. This great measure gave legislative recognition to the jury system in criminal trials, as connecting the local with the central jurisdiction; and it was the first step in constructing the fabric of our judicial legislation. Henry I. had adopted the institution of itinerant justices, and Henry II. now proceeded to enlarge his plan and to make it permanent. A commission visited each shire; and to this commission, in conjunction with the sheriffs, grand juries of the county were to present accused or suspected persons. Among other provisions, all qualified persons were required to serve on juries, and every franchise was opened to the sheriff.

Assize of Clarendon.

Great Councils.

In 1170, after the conquest of Brittany, Henry II. returned to England. At Easter he held a great court at Windsor, and shortly afterwards a second great court in London. In the latter assembly, by an extraordinary act of authority, he removed all the sheriffs of the kingdom—against whom loud complaints had been made because of their exactions—from their offices. He also issued a commission of inquiry into their receipts. The inquest was taken by twelve barons, clerical and lay, in each district, and the result was apparently the acquittal of the officials. But, while no proceedings were taken against them, the sheriffs were not restored to their sheriffdoms, and the king appointed, in their places, officers of the Exchequer in whom he had confidence.

Inquest of 1170.

The King's heir crowned.

An event of much import occurred at Whitsuntide in 1170. The king's heir was crowned as Henry III. by

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Roger, Archbishop of York. Becket, with whom Henry had effected a hollow reconciliation, was furious at this step, and, with the authority of the Pope, suspended the Archbishop of York, and excommunicated the Bishops of London and Salisbury. This action on the part of the violent and vainglorious Primate was very unwise; but, presuming on his popularity with the multitude, he followed it up by publishing sentence of excommunication against Nigel de Sackville, Robert de Broc, and others, on the ground of their having either assisted at the coronation of Prince Henry, or joined in the king's persecution of the exiled clergy. The crisis was now acute, and it had a dramatic ending by the assassination of Becket, by four impetuous knights in the king's service, on December 29th, 1170.

Becket excommunicates the Bishops.

His assassination.

Henry in Ireland.

Angered and distressed by the murder of the Archbishop, and surrounded by difficulties, Henry crossed over to Ireland in 1171, and received in that distracted country the homage of the Norman nobles, who had recently appropriated a large part of the island. Returning to England, he received the Pope's absolution in May 1172, first clearing himself by oath before the papal representatives of all complicity in Becket's death, renouncing the Constitutions of Clarendon, and swearing adhesion to Alexander III. against the antipope. The younger Henry was now crowned a second time, at Winchester instead of Westminster, in company on this occasion with his wife Margaret, daughter of Louis VII.

His absolution by the Pope.

Feudal revolt.

In 1173 a great feudal revolt broke out in England, partly due to the machinations of those whose interests had been affected by Henry's reforms. It was favoured by the king's own sons, and by the kings of France and Scotland. After a desperate struggle Henry was victorious both in his French and English campaigns—a result in great measure due to the faithfulness of the English people. The conflict demonstrated that the king had established a strong constitutional hold upon the body of the nation, the Church, and the newer and more Anglican portion of the baronage. Henry now held frequent councils, and

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BOROUGH OF LEWISHAM
MANOR HOUSE

was indefatigable in consolidating his rule. He enforced the forest law against the barons, compelled the Welsh princes and the border barons to swear peace, and at a great council held at Woodstock issued an edict curtailing the freedom of those who had been up in arms, and ordaining that no one on this side of the Severn was to wear arms as a part of his ordinary habit. At Nottingham he held a special visitation of the priests, and at Windsor a great council, at which he concluded a treaty with the King of Connaught.

Henry's legislation.

But the most important of these legislative councils was one held at Northampton in January 1176, when the king renewed and amplified the Assize of Clarendon. The result of this great assembly was the Assize of Northampton, drawn up in the form of instructions to the six committees of judges who were to visit the circuits now marked out. While the earlier articles corresponded with those of Clarendon, they were more severe in the punishment prescribed, and placed less power in the hands of the sheriffs. The new articles, which may be studied in connection with the Great Charter of John, were of considerable importance as touching the tenure of lands, reliefs, dower, etc. As a political measure this Assize was likewise important, for it was the first judicial act of importance since the suppression of the rebellion of 1173. It provided for the exaction of oaths of fealty from all classes, freeholders and villeins alike; insisted upon the complete destruction of the castles which had been held against the king; decreed the registration of all fugitives and outlaws; and ordained that the judges upon their visitations were not only to exercise criminal jurisdiction, but "to take recognitions of novel disseisin, and to hear every sort of plea that was cognisable under royal writ touching fiefs of half a knight's fee or less. In their fiscal capacity they were to examine into the escheats, wardships, crown lands, and churches."

Assize of Northampton, 1176.

At the National Councils of 1176-77, which followed each other in rapid succession, much important business

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was transacted. In one, the bishops, earls, and barons met to adjust a dispute between the two archbishops; another approved the marriage of the king's daughter with the King of Sicily; a third witnessed the assumption by Henry of all the castles in the kingdom; while at a fourth the ambassadors of the two emperors and of several minor princes were received. All these councils were held in 1176; and in 1177 the assemblies and courts were quite as frequent. At a court held at Winchester in February of the latter year, the king directed a new inquest into the conduct of the royal bailiffs, and issued summonses for a general feudal levy. At a great assembly subsequently held in London, Henry arbitrated, with the advice of his court, between the kings of Navarre and Castille; while in May a council was held at Geddington to treat of the peace and stability of the realm. An assembly at Oxford beheld the nomination of John as king of Ireland, "and the partition of that country among the barons who had joined in the adventure of the conquest." The month of July 1178 witnessed the king's reform of the Curia Regis, as already described.

Frequency of National Councils.

Formation of Judicial Circuits.

After the retirement of Richard de Lucy from the office of chief justiciar, in 1179, the king remodelled the provincial administration. At a great council held at Windsor he set aside the arrangement of six circuits, previously devised, and divided England into four districts—east, west, midland, and north—assigning to three of them five judges each, one bishop, one or two chaplains or clerks, and three or four laymen. But to the northern circuit six judges were appointed, and no bishop. In 1180 Ranulf Glanvill, the great legal luminary, and author of the earliest treatise on English law, was appointed chief justiciar, which office he continued to hold until the king's death. A new coinage was also ordered this year, being the second of the reign.

The Saladin tithe.

Henry held four councils in the second half of 1184, and on March 17th, 1185, he presided at an assembly of

bishops, abbots, earls, and barons called at Clerkenwell, to discuss a crusade. Councils were also frequent in 1186; and in 1188, after the disastrous news of the capture of Jerusalem, Henry obtained from a great national council at Geddington a promise of a tithe to be contributed towards the crusade, "for the assessment and collection of which his favourite plan of inquest by jury was again employed." This impost, which is known as the Saladin tithe, was important constitutionally from the fact that it was the first attempt to bring taxation to bear on personal property; and also because local jurors were employed to determine the liability of individuals, as had been done in 1181 in the Assize of Arms.[1]

Death of Henry.

Henry II.'s closing years were troubled and unhappy. He was in conflict with France and with his rebellious sons. The younger, Henry, died in 1183; but his other ungrateful sons, Richard and John, continued hostile and conspiring to the last. In the midst of strife and

[1] Two works of importance throw a flood of light upon the administrative and other reforms of Henry II., as well as upon various constitutional precedents. To the first of these, Glanvill's treatise, *De Legibus et Consuetudinibus Angliæ*, composed about 1181, allusion has been made above. The other, *Dialogus de Scaccario*, was compiled by Richard Fitz-Nigel, or Fitz-Neal, at one time Treasurer of the Exchequer, and Bishop of London from 1189 to 1198. The treatise, which is in two books, is cast into the form of a dialogue between a master and a scholar. The first book describes the functions of the Exchequer, the business of the Treasury, and the terms used in the law and government of the country, etc.: and the second treats of summonses, the rendering of accounts into the Exchequer, and of the sheriffs, and the different branches of the king's revenue. The *Dialogus* was first printed by Madox in his *History of the Exchequer*, and it has since appeared in Bishop Stubbs's *Select Charters*. An interesting monograph on Henry II. and his times has been written by Mrs. J. R. Green. In addition to the old chroniclers, who are the original authorities on this reign, may be mentioned Lyttelton's *Life of Henry II.*, Giles's *Letters of Becket*, and Robertson's *Life* of the great Churchman. But Stubbs's *History*, and his Preface to the editions of Benedict of Peterborough and Roger of Hoveden in the Rolls series, are both comprehensive and authoritative.

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disertion, and with his power abroad greatly shattered, the king expired at Chinon, in France, on July 6th, 1189.

His reign constitutionally considered.

While this monarch enjoyed a great reputation in Europe, and while his reign was in many respects brilliant and successful, his chief title to remembrance is as a legislator and administrator. His government was both thorough and politic, and throughout he stands pre-eminently as the lawgiver, the restorer and maintainer of peace and order. His objects were lofty, but the fates were against him, and he could not do all even in the way of beneficent legislation that he would have done had circumstances been more propitious. But his rule was as certainly fatal to feudalism as it was valuable in limiting the powers of proud prelates and the authority of the Church. He was despotic, but—as he conceived—in the interests of the people; and back to him dates that union between king and nation which was afterwards consolidated in the later English monarchy. As the conqueror of Ireland and Scotland, he fulfilled the imperial aspirations of the ancient Anglo-Saxon kings. He likewise held a commanding position in Europe, where he enjoyed the reputation of a great warrior, diplomatist, and statesman. But it is from the constitutional point of view that his reign appeals to modern Englishmen, and viewed from this aspect he remains one of the greatest of our kingly legislators.

CHAPTER II.

JOHN AND THE GREAT CHARTER.

Richard secures the Succession

Before dealing with the important reign of John, that of Richard I. demands some attention. While from the strictly constitutional point of view it is less significant than the rule of many other sovereigns, it was yet marked by consolidation and development. This was due to the king's ministers, however, for Richard, who was the most un-English of our monarchs, spent nearly all his time abroad. Upon the news of his father's death, he hastened to England, and easily secured the succession. He seized his father's treasures ; deposed the justiciar, Ranulf Glanvill, whom he imprisoned until he had paid a heavy ransom ; disposed in marriage of most of the royal wards; and made a splendid progress through the West of England. On September 3rd, 1189, he was crowned with unusual ceremony and magnificence; but he issued no charter of liberties, as had been the case with his immediate predecessors. The barons accepted him as Henry's heir without question, and throughout his whole reign his rights were never disputed, save by the intriguing John.

Council at Pipewell.

A great council was held at Pipewell, Northamptonshire, on September 16th, when there were present the archbishops, bishops, abbots, priors, the Archbishop of Dublin, the Irish bishops, and *magnates regni*. The king appointed new ministers, gave away the vacant bishoprics, raised a large sum of money by the sale of

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charters of confirmation, and made arrangements for the government during his absence at the Crusades. He further sold to the Scots their freedom from the obligation which his father had extorted, and having accumulated a large sum of money, in December he left for Palestine, where his brilliant feats brought him immortal renown.

Richard's Ministers.

The chancellorship was placed in the hands of William Longchamp, a clerk of Norman extraction, already appointed by Richard Bishop of Ely. The justiciarship was given to William Mandeville, Earl of Essex and Count of Aumâle, some of its powers being reserved to Hugh de Puiset, Bishop of Durham, who soon, however, was in sole charge, owing to the death of the earl. The chancellor paid £3,000 for the Chancery, and Hugh of Durham paid a still larger sum for the justiciarship and the earldom of Northumberland. Strife arose between Hugh and William Longchamp, the king having appointed the latter joint justiciar, awarding to Bishop Hugh the jurisdiction of the North. But on the appearance of his rival in England, William Longchamp had him arrested and bound over to inaction. Longchamp, who was now both justiciar and chancellor, was shortly afterwards made Papal legate. In consequence of the absence of the Archbishop of Canterbury, coupled with the disgrace of Geoffrey, the king's half-brother, he exercised supreme control both in Church and State.

Fall of Longchamp.

Longchamp, by his exactions, his corrupt judicial sentences, his nepotism, and his undisguised contempt for everything English, soon incurred the hate of his colleagues, and of the baronage and the people. His overthrow was consequently resolved upon ; and without any royal writ, but like some famous assemblies before and after, and in the exercise of that inherent power which was older than kingship, the Witan of England—bishops, barons, and London citizens—met together in October 1191, at St. Paul's, under the leadership of the king's brother, Earl John. "To find one who afterwards became the most hateful of tyrants playing the part of

Henry of Bolingbroke or William of Orange, has indeed a strange sound; but it may possibly help to explain some later and puzzling passages in our history. The assembly which thus came together did not indeed depose the absent king, but it set aside the minister whom he had appointed; it debated and accepted the royal appointment of another minister, and of its own authority it placed John, in his momentary character of patriot, at the head of the kingdom which he had in some sort delivered."[1] This fact is not without its importance. Strictly speaking, the barons acted unconstitutionally in thus proceeding upon their own authority; but their bold step was justified on the ground of the paramount interests of the nation.[2]

Government of Walter de Coutances.

On the fall of Longchamp, Walter of Coutances,[3] Archbishop of Rouen, was appointed supreme justiciar, with William Marshall, Geoffrey Fitz-Peter, Hugh Bardulf, and William Briwere, as coadjutors. The government of Walter de Coutances lasted until 1193, being marked by the unsuccessful rebellion of John, and the undertaking necessary to raise the enormous ransom of £100,000 which the emperor required for the release of Richard. It says much for the country that this sum could be raised at all for an imprisoned king, when he might have been deposed, and the imposition averted by the elevation of his brother to the throne.

Aid for Richard's Ransom.

The queen-mother and the justiciars issued a public edict for the collection of the aid, towards which all the people were to contribute. The aid was taken on the principle of scutage, twenty shillings on the knight's fee; this was supplemented by a tallage, hidage, and carucage, which brought under contribution the rest of the land of the country: the wool of the Gilbertines and Cistercians was also demanded, and the treasures of the churches, their plate and jewels; but the heaviest impost

[1] Freeman's *Norman Conquest.*

[2] Stubbs's *Constitutional History.*

[3] Not *William* of Coutances, as Green, in his *History of the English People*, invariably speaks of him.

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was the exaction of one-fourth of revenue or goods from every person in the realm,—a very dangerous precedent, and one only to be justified on the ground of extreme necessity.

Great Council at Nottingham.

At Christmas, 1193, the Archbishop of Rouen resigned the justiciarship, and was succeeded by Hubert Walter, Archbishop of Canterbury. Richard paid a second visit to England in 1194, and held a great court and council at Nottingham, which was attended by the queen-mother, the two archbishops, a number of bishops and earls. The business occupied four days, the council closing on April 2nd. On the first day the king removed the sheriffs of Lincolnshire and Yorkshire, and sold their respective offices. On the second day he demanded judgment against his brother John for having usurped his castles and entered into a confederacy with the King of France against him; as also against his adviser, Hugh, Bishop of Coventry, and other of the king's enemies. They were summoned to appear within forty days, and in default John was to be banished, and Hugh tried by the bishops as a bishop, and by the lay judges as a sheriff. On the third day Richard demanded a carucage[1]—two shillings on each carucate of land—a third part of the service of the knights, and the wool of the Cistercians; but in place of the last item he accepted a pecuniary fine. The last day of the council was spent in hearing and determining grievances and accusations. The assembly broke up after coming to a resolution that to nullify the act of submission which Richard had been obliged to perform to the emperor, he should be crowned again. This was solemnly done on the following Easter, at Winchester. The act was intended to show that, notwithstanding his captivity, Richard had lost none of his dignity as King of England.

Having obtained his supplies, Richard left England

[1] Fragments of the returns to this carucage inquest of 1194—hitherto supposed to be non-existent—have been identified and collected by Mr. Round. It is now hoped that other records may be brought to light.

for France, where he remained, in conflict with King Philip, until his death in 1199. Meanwhile, the government of England was ably carried on by Hubert Walter. Following up the policy of Henry II., in 1194 he ordered a visitation by the justices, who were granted extensive powers. By the articles of this *iter*, or visitation, the constitution of the grand jury of the county was defined; inquiry was ordered to be made into the king's feudal claims, wards, escheats, ferms, and churches; and a tallage was to be exacted from all cities, boroughs, and demesnes of the sovereign. It was intended also to make a general inquest into the conduct and receipts of the sheriffs; but this the archbishop postponed. "This visitation, which comprehends almost all the points of administrative importance which mark the preceding reign, constitutes a stage in the development of the principles of election and representation. The choice of the coroner, and the form prescribed for the election of the grand jury, whether this act originated them, or merely marked their growth, are phenomena of no small significance."[1]

Hubert Walter's Visitation.

The second scutage of the reign, levied on those tenants-in-chief who had not accompanied the king to Normandy, was taken in 1195. In June of the same year Hubert Walter held a great court at York, and this was followed by a provincial council, at which were passed fifteen important ecclesiastical canons. An Oath of Peace was issued in 1195, incumbent upon all persons above the age of fifteen, and the enforcement of the edict was committed to certain specified knights. This is regarded as the origin of the office of Conservator of the Peace, which in the reign of Edward III. developed into that of Justice of the Peace.

Court at York.

The inequalities of taxation led to a revolt of the poorer citizens of London in 1196, but a swift fate overtook the leader, William Fitz-Osbert—who was known also as William Longbeard. Fitz-Osbert, who

Revolt in London.

[1] Stubbs's *Constitutional History.*

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was the first demagogue in English history, organised a resistance to the poll-tax, and he is reputed to have enrolled a force of upwards of fifty thousand men. "He held meetings, denounced the oppression of the governing *bourgeoisie*, and proclaimed himself the saviour of the poor." Some historians report, that having sustained a rebuff at the hands of the king, he sought to take advantage of an undoubted popular grievance for his private ends. Be that as it may, the justiciar, Hubert Walter, by his vigorous measures suppressed the rising, and Fitz-Osbert was captured, tried, and put to death as a traitor. Speaking of this popular leader, William of Newburgh observes that "the contriver and fomenter of so much evil perished at the command of justice, and the madness of this wicked conspiracy expired with its author." But Matthew Paris says: "So perished William Longbeard, for endeavouring to uphold the cause of right and the poor. If it be the cause which makes the martyr, no man may be more justly described as a martyr than he." The revolt stands out historically as the first attempt of the people to resist taxation which they had had no hand in imposing.

The first English demagogue.

Death of William Longbeard.

Scutage.

A third scutage was levied in 1196, and indeed so much money went out of England for the Crusade, and for the king's ransom, that the genuine coin of Richard's reign is not to be met with in the collections of the curious. There was an Assize of Measures in 1197, issued for the purpose of securing the uniformity of weights and measures throughout the kingdom. But it was found impossible to carry out the scheme, which afterwards formed the basis of one of the articles of the Great Charter, and the judges set it aside in the reign of John. It is singular to note that notwithstanding the powers of the legislature, a perfectly uniform system of weights and measures has not been secured in seven centuries.

Weights and Measures.

A Royal Aid refused.

Two events of real constitutional importance are assigned to the year 1198. In a council of the barons

held at Oxford, the king's demand for money for his war in Normandy was refused. Hugh of Avalon, Bishop of Lincoln, boldly resisted the grant. The lands of the Church, he said, were bound to render military service within England, and there only; and rather than pay this impost he would go back to his home in Burgundy. He was supported by another prelate, Bishop Herbert, of Salisbury, a man of considerable ministerial experience and knowledge of the exchequer. The archbishop, who brought forward the aid, was obliged to withdraw his proposal, and resigned shortly afterwards. Thus, even at this early period, a successful constitutional opposition was offered to a royal demand for money, and the point is one of much significance, as indicating that the barons and leaders of the people were not the mere tools of the sovereign.

Carucage of 1198.

The second noticeable matter was the imposition of a carucage—a tax of five shillings on each carucate or hundred acres of land. A new Domesday survey was necessary for the levying of this tax, which was only the Danegeld revived in a new and more oppressive form. This later inquest had an importance not attaching to its great predecessor of 1086, for it shows the principle of representation to be "gradually enlarging its sphere of work, and the process now used for the calculation will before long be applied to the granting of the tax, and ultimately to the determination of its expenditure." It does not appear whether the survey was actually carried out, but the carucage of 1198 was only collected with difficulty.

Fitz-Peter's Justiciarship.

One of the last acts of Richard I. as affecting England was the appointment of Geoffrey Fitz-Peter, who had been an itinerant justice and a member of the Council of Justices, to the office of Chief Justiciar. Fitz-Peter began his career in July 1198 by a severe forest visitation, and by directing a new *iter* of the justices on nearly as comprehensive a scale, according to Hoveden, as that of 1194. Under this new *iter* the nominators of the Great Assize were no longer appointed by the sheriffs, but

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elected by the suitors of the county court. The Forest Assize further directed that the whole body of the suitors of that assembly should attend at the sessions of the forest justices. The administration of the new justiciar was characterised by great severity and rigid impartiality, and it was he, moreover, who compelled the religious houses to pay the carucage of 1198. His government and that of his predecessor "gave fresh scope to the principle of representation both in financial and in judicial matters."

Death of Richard the First.

Early in April 1199 Richard the Lion Heart met with his death while besieging the obscure castle of Chaluz. Richard had brilliant qualities, and he has written his name indelibly on the scroll of valour; but he was a bad king, and was utterly out of sympathy with his people. Peace was preserved at home during his reign, but at a heavy cost; and his ministers, while acting arbitrarily, could not but perceive the rising tendency to self-government. Richard's reign was one of unparalleled exactions in money; but some constitutional gains came with the oppression, such as the application of the representative system to the assessment of real property in general for the purpose of imperial taxation. Then, as already indicated, there was the introduction of the system of election to county functions and offices. During

Municipal progress.

Richard's reign, also, charters were granted to boroughs on a scale which makes this period one of the great landmarks in municipal history. The corporate identity of the municipality was now firmly established. There was a sort of consolidation into a single organised body of the variety of franchises, guilds, and other departments of local jurisdiction. It was probably connected with, and perhaps implied by, the nomination of a mayor, who now appears for the first time.

John becomes King.

Although Richard had originally named Arthur, the son of his elder brother Geoffrey, as his heir, towards the end of his reign he designated John as his successor. Accordingly, although John was absent for six weeks making good his hold upon Normandy, the justiciar and

KING JOHN AND HIS RETINUE IN MIDDLESEX FOREST.

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William Marshal acted in his interest in England, and made the discontented barons the most ample promises on his behalf; not a grievance, public or private, was to remain without redress. Upon this all the barons, including the Earl of Huntingdon, brother of the King of Scots, took the required oaths. John shortly afterwards landed in England, and was crowned at Westminster on the feast of the Ascension, May 27th, 1199.

His election and coronation.

According to Matthew Paris, the occasion of John's coronation "was taken advantage of to set forth some of the truest constitutional doctrines that ever English lips uttered or English ears listened to." Before pouring the oil on the head of the duke and king elect, Archbishop Hubert is alleged to have declared that no man had a right by birth to the kingship of England; that her crown was the gift of the nation to bestow as it thought good; and that the only limit to her freedom of choice was that, if the kingly house numbered among its members a man fit to be king, it was right to give the crown of his fathers to him rather than to a stranger. John, then, was no usurper, but a sovereign as lawfully elected as Edward the Confessor or even Alfred himself had been. No doubt when the people chose him they had faith in his promises and his apparent kingly virtues. John took the oath promising just government, but no charter of liberties seems to have been issued.

His character.

John has sometimes been counted as one of the ablest of the Angevin kings; but whether that be so or not, he was certainly the most wicked and the most ruthless. He was great in vice and crafty in statesmanship. But it is humiliating to reflect that one who was so astute in political combinations lost Normandy almost without a blow, and became the vassal for his English dominions to Innocent III., surrendering his kingdom to the pope's representative, and receiving it back as a papal fief.

Loss of Normandy.

After making two futile attempts to secure the homage of the King of Scots, John went to France in April 1200. While away he divorced his wife Hawisia of Gloucester, and married Isabella of Angoulême, who

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was betrothed to Hugh of Lusignan. These acts alienated the whole of the Gloucester influence from the king, and provoked the hostility of France. This feeling of hostility was intensified by John's supposed murder of Arthur in 1203. John was twice summoned to Paris by Philip to answer the charges against him, which included one of severely oppressing the barons of Poitou; but as he was contumacious Philip declared him to have forfeited his fiefs, and at once seized upon Normandy and Anjou. The loss of Normandy had the result of making the barons thorough Englishmen—a point of great constitutional importance; and henceforth there could be no danger of transforming England into a feudal nation. It was, says Freeman, "the formal undoing of the Conquest."

John's unconstitutional acts.

John took a high hand in ignoring legislative and constitutional precedents. "Although from time to time he summoned his vassals and demanded an aid in constitutional form, he more frequently exacted the taxes without a formal grant, and, by imposing fines and levying ransoms on the barons who offended him, without a legal process or sentence, went, in oppressiveness, far beyond anything done by Richard's ministers."[1] He took scutage and carucage as a matter of course, and raised the rate of the former from twenty shillings to two marks on the knight's fee. Imitating the spoliation policy of William Rufus with regard to the national militia, John exacted from the army, in 1201 and 1205, a payment in commutation of service. In 1204 he levied an enormous military aid from the tenants-in-chief, and raised the rate of scutage to two marks and a half. Three years later he exacted a thirteenth of all chattels throughout the country, an imposition which naturally called forth loud remonstrances.

His tyranny.

By the death of Hubert Walter, July 12th, 1205, the king lost his most sagacious adviser. Yet, although his French dominions were gone, and his hold upon England

[1] Stubbs's Introduction to the *Select Charters*.

was precarious through his quarrel with the clergy, John took the opportunity to make his financial tyranny still more irksome. The pope consecrated Stephen Langton Archbishop of Canterbury, but John refused to receive him; and in 1208 Innocent placed England under an interdict, excommunicating its sovereign in the following year. John sequestered the estates of the clergy, and many bishops fled from the kingdom, while the barons remained neutral in the struggle. Having seized upon the estates of certain suspected barons, John next endeavoured to propitiate the people by remitting forest visitation fines, by abolishing vexatious customs in the ports, and by various other measures for the preservation of the peace. But all was of no avail. Fearing the power of Philip, distrustful of the affection of his people, and trembling before the menaces of Rome and the prospect of his deposition, he made an abject surrender of his crown to the pope on May 15th, 1213.

Surrender to the Pope.

On August 4th, 1213, a general assembly was called at St. Alban's to discuss the amount of compensation due to the plundered bishops. This council is so important, from the constitutional point of view, that I must pause here to make some general observations upon the national councils. It was long held, touching these ancient councils of the realm, that knights, citizens, and burgesses were included with the nobles under the term *sapientes;* but it has now been ascertained that the first writ extant, summoning representatives of the people or commoners, was made out in 1265, in the reign of Henry III. Before this, it cannot be established by history or records that any commoners, elected by the people or others, were called to our great councils and parliaments as members of the same. There were, nevertheless, several previous minor assemblies at which commoners were present. A council of chosen men of the towns assembled at St. Alban's, on the date above-mentioned; and in the same year, as will shortly be seen, one was convened at Oxford, containing chosen men from the shires. Again, the sheriffs were directed

Important Representative Assembly at St. Alban's.

Commoners first summoned.

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in 1254 to see that their several shires returned two knights each, to settle what aid they were willing to give to the king. But the earliest apparent attempt to summon the tenants of mesne lords who had no voice in the legislative assembly, and also the inferior immediate tenants of the crown, was at the great council of St. Alban's in 1213. The reeve and four men who attended "were probably called upon merely to give evidence as to the value of the royal lands; but the fact that so much besides was discussed at the time, and that some important measures touching the people at large flowed directly from the action of the council, gives to their appearance there an unusual significance. To the first representative assembly on record is submitted the first draught of the reforms afterwards embodied in the Charter: the action of this council is the first hesitating and tentative step towards that great act in which Church, baronage, and people made their constitutional compact with the king, and their first sensible realisation of their corporate unity and the unity of their rights and interests."[1] No doubt important constitutional debates took place at this council, but the historians, who occupied themselves with matters of inferior moment, have failed to record them. The justiciar, Geoffrey Fitz-Peter, who called the council, promised henceforth to abide by the laws of Henry I.

Council at Oxford.

The king summoned a council at Oxford on November 7th, 1213, to which, in addition to the armed force of knights, each sheriff was directed to send four discreet knights from his county to discuss with the sovereign the condition of the country. According to the Report on the Dignity of a Peer, there was clearly an intention that the assembly should be thoroughly representative. This is "the first instance of the summoning of the folkmoot to a general assembly by the representative machinery already used for judicial purposes. The four men and the reeve had from time immemorial represented

[1] Stubbs's *Constitutional History.*

the township in the shiremoot; now the four men and the sheriff represent the shiremoot in the national council." Unfortunately it is matter of conjecture whether this council of Oxford was ever held.

Parliament at St. Paul's.

A great council, or "*colloquium*," was held at St. Paul's on August 25th. The word *colloquium* is equivalent to Parliament; and this was a true Parliament of the realm, though no king presided in it.[1] It was attended by the Archbishop of Canterbury, the patriotic Stephen Langton, and by the bishops, abbots, priors, deans, and barons of the kingdom. The archbishop produced the charter of Henry I., granting to his people their ancient laws and liberties. The barons swore that they would contend for those liberties, even, if need were, unto death.[2] Henry's charter was hailed as a base for the needed reforms.

The Northern Barons.

While this was transacting, John was endeavouring to deal with the formidable opposition of the barons of the North. The barons had again demanded a settlement of their grievances, which had been accumulating for years. The king was desirous of undertaking an expedition against France, but the barons refused foreign service. While marching northwards, John was overtaken at Northampton by Langton, who prevailed upon him to submit the strife to legal judgment before resorting to arms. Nevertheless, John proceeded as far as Durham, but here he abandoned his purpose; then, returning to London, he did homage to the legate Nicolas.

Death of Fitz-Peter.

Geoffrey Fitz-Peter, the justiciar, laid the claims formulated at St. Alban's and at St. Paul's before John immediately upon his arrival in the capital. But the speedy death of Geoffrey on October 2nd caused the King lively satisfaction. "Now by the feet of God," he exclaimed, "I am for the first time King and Lord of England." His first act, the appointment of Peter des Roches, the Poitevin Bishop of Winchester, as justiciar, still further exasperated the barons. "But the death

[1] Roger of Wendover. [2] M. Paris.

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of Geoffrey only called the archbishop to the front, and Langton at once demanded the king's assent to the charter of Henry I. In seizing on this charter as a basis for national action, Langton showed a political ability of the highest order. The enthusiasm with which its recital was welcomed showed the sagacity with which the archbishop had chosen his ground. From that moment the baronage was no longer drawn together in secret conspiracies by a sense of common wrong or a vague longing for common deliverance; they were openly united in a definite claim of national freedom and national law."[1]

Patriotism of Langton.

John's strife with the barons.

To this union John could only oppose the policy of delay. He went abroad in the spring of 1214, and attacked the French king. He had some success in the South, but his German and French allies were severely defeated at Bouvines, and John was compelled to return to England in October, sorely disappointed. The northern barons were now joined in their resistance to the king by the rest of their order. Under cover of a pilgrimage, the barons met at Bury St. Edmund's, and swore that if John refused to restore their liberties they would make war upon him till he confirmed them by charter under the king's seal. Then they separated until Christmas, but determined to raise a force in the meantime. John endeavoured to separate his enemies by promising to the clergy freedom of election, and he issued a charter to this effect on November 21st, but it failed of its purpose; and the king further aggravated the situation by demanding a scutage from the northern nobles who had refused to accompany him to Poitou, which the barons declined to grant.

Progress of the struggle.

So matters remained until January 6th, 1215, when John received a deputation from the barons at the Temple. The old claims were reiterated, and the king, smothering his rage, requested a truce until Easter. During the interval he again issued the charter of freedom to the Church, and

[1] Green's *History* vol. i.

KING JOHN SIGNING MAGNA CHARTA.

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took the Crusaders' oath, which made it sacrilege for any one to fight against him. But all was in vain : the nation as a whole was hostile to him. It is true his ministers, including Geoffrey de Lucy, Thomas Basset, Geoffrey de Furnival, and William Briwere, still adhered to him, as also did some of the great nobles, such as Ranulf, Earl of Chester, and the sagacious William Marshal the elder, Earl of Pembroke ; the latter clung to him, however, in the hope of persuading him to constitutional reforms. The general body of the barons gathered in arms at Brackley, in Northamptonshire, with the view of laying their claims before the king. "Why do they not ask for my kingdom ?" John passionately exclaimed. "I will never grant such liberties as will make me a slave !" But England was rising, and the tyrant trembled. From Oxford John sent to inquire the details of the barons' claims, and while declining to grant them, he proposed that they should be referred to the arbitration of the Pope and eight persons, four to be chosen by himself and four by the barons. Instead of consenting to this, the barons threw off their allegiance, and began to attack the royal castles. In May they entered London, under the command of Robert Fitz-Walter, "Marshal of the Army of God and Holy Church." They were enthusiastically received, and other cities followed the example of the capital. So reduced was John at one time that seven knights were his sole supporters. Pandulf, Langton, Earl Ranulf, and William Marshal counselled the king to accept the Charter, and only the new justiciar, Peter des Roches, recommended its rejection.

Granting of Magna Carta.

Unable longer to resist the will of the barons and the people, and deserted by his friends, John agreed to a conference, which was called at an island near the meadow of Runnymede, on the banks of the Thames, between Windsor and Staines. The barons presented their grievances in forty-nine articles, which the king accepted, and to which he set his seal. Then on the same day, the ever-memorable 15th of June, 1215, he issued the Great Charter of liberties. A strange scene

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that, in which John, with a handful of nobles, appeared on the one side, while on the other the barons appeared in such numbers that it seemed as if all the nobility of England were collected into one body.[1] *Magna Carta*, as originally granted by King John, consisted of a preamble and sixty-three clauses.[2] This historic document has not only been described as the basis of our liberties, but as the foundation of our system of constitutional government. The latter definition is incorrect, for there is no one point in our history which can be identified as the initial stage of the legislative body. Nevertheless, the signing of *Magna Carta* is one of the great epoch-making events in our constitutional annals. "It is still the keystone of English liberty. All that has since been obtained is little more than as confirmation or commentary; and if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy."[3]

Character of the Charter.

The chief glory of the Charter granted at Runnymede was its equal distribution of civil rights to all classes of freemen. "In this just solicitude for the people, and in the moderation which infringed upon no essential prerogative of the monarchy, we may perceive a liberality and patriotism very unlike the selfishness which is sometimes rashly imputed to those ancient barons."[4] And as posterity is greatly indebted to the men who strove with the King, and procured this concession of popular rights, it should not be forgotten that we owe the Charter chiefly to the efforts of two great men, one distinguished in ecclesiastical and the other in State affairs—Stephen Langton, Archbishop of Canterbury, and William, Earl of Pembroke. The time was exceedingly critical, and

[1] M. Paris.

[2] A number of copies of the Great Charter were made for preservation in the cathedrals and churches, and one of these copies may still be seen in the British Museum. It is somewhat injured by age and fire, but the royal seal still hangs from the parchment.

[3] Hallam's *State of Europe in the Middle Ages*, chap. viii.

[4] Hallam's *Europe*.

had it not been for the courageous stand they made, the foundations of our civil liberty might not have been laid, as they were laid, "broad based upon the people's will."

Its main provisions.

With regard to the main provisions of *Magna Carta*, the first article declares that the English Church shall be free, and shall have her whole rights and liberties inviolate. Article 12 provides that no scutage or aid shall be imposed except by the common council of the kingdom, save for redeeming the king's person, etc. To have a common council of the kingdom to assess an aid, otherwise than in three special cases, the King will cause to be summoned the archbishops, bishops, abbots, earls, and "greater barons,"[1] singly, by royal letters; and besides, his Majesty will cause to be summoned in general by the sheriffs and bailiffs, "all those who hold of us in chief, to a certain day, at the distance of forty days at least, and to a certain place; and in all the letters of summons we will express the cause of the summons; and the summons being thus made, the business shall go on at the time appointed, according to the advice of those who shall be present, though all those who had been summoned may not be present." But while these provisions marked an advance in the order and method of government, no inference can be drawn that cities and boroughs were to have any share in such common councils or assemblies. The most important articles in the Charter were the 39th and 40th. The former provided that "no freeman shall be seised or imprisoned, or disseised or outlawed, or in any way destroyed, nor will we try him, or pass sentence on him, except by the legal judgment of his peers, or by the law of the land"; and the latter declared that "to none will we sell, to none will we deny, to none will we delay right or justice."[2] These articles were the substance

National councils.

[1] Although the term greater barons (*majores barones*) is now found in an important instrument for the first time, the distinction is of a much older date.

[2] These clauses are repeated in almost identical language in the twenty-ninth clause of Henry III.'s Charter, which is the existing law.

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and kernel of the Charter. The persons of Englishmen were in future to be inviolate and safe from seizure, except under legal and rightful process; and justice, which had hitherto been scandalously outraged—and by none more than by the king himself—was henceforth to be righteously administered, and without fear or favour.

Habeas Corpus.

The principle of Habeas Corpus, the greatest safeguard of our personal liberty, thus found the clearest exposition and recognition in John's Charter. No man's body could be hereafter detained in prison without trial. Writs analogous to that of Habeas Corpus were in vogue before *Magna Carta*, but they were not issuable as of right —only as a matter of royal favour; and it is the knowledge that from this period it was the undoubted right of every citizen to claim the privilege of Habeas Corpus, which now becomes the great central fact of interest. Henry III., in renewing the principal clauses of the Charter, affirmed this right in even still clearer and more emphatic language. Clause XXIX. of this sovereign's Charter, already referred to, declares that "no freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor send upon him sentence, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or delay to any man, justice or right." Yet, notwithstanding this express declaration upon the incorrupt execution of justice, the perversion of right, whether from influence or bribery, still continued to disgrace the State, though nothing like to the extent which prevailed before the granting of the Charter.

Other clauses.

Touching the remaining clauses of the Great Charter, they included important provisions which set limits to the usuries of the Jews; pledged the king to raise no scutage or aid "save through the common council of the realm, or on the three ordinary feudal occasions"; prescribed the forms of summoning this council; forbade any increase of the customary forms; empowered every one to go away from and come back to the realm unhindered; mitigated

the oppression of the Forest Laws; and banished the royal mercenaries. These concessions were lost when the Charter was first confirmed in 1216 by the Earl of Pembroke for the youthful king, Henry III., the clauses then numbering only 42. But at the second confirmation, made in 1217, the clauses had grown to 47, one of which settled the times of holding the county court and view of frankpledge, while another restricted grants in mortmain. At the fifth confirmation of the Charter, made in 1225, the clauses were reduced to 37 only, and these constituted the final and accepted legal version. Yet the Charter in its ultimate form was most comprehensive, securing the interests of all. Freedom of election of bishops, etc., was granted to the Church; reliefs were limited to a certain sum, according to the rank of the tenant; the waste committed by guardians in chivalry was restrained; the disparagement in matrimony of female wards was forbidden, and widows were secured from compulsory marriage; the franchises of the city of London and of all towns and boroughs were declared inviolable; freedom of commerce was guaranteed to foreign merchants; the Court of Common Pleas, instead of following the king's person, was fixed to sit at Westminster; the tyranny exercised in the neighbourhood of royal forests met with considerable check; mesne tenants were secured against mesne lords; the wainage of villeins was exempted from distraint to pay fines; fines were directed to be assessed on oath, by upright men of the venue, and to be proportioned to the offence; uniformity in weights and measures was ordered; and sheriffs were curbed in the exercise of their manifold authority.[1]

No Assembly for legislation.

It is a striking circumstance with regard to the Charter, that by neither party was an appeal ever made for the decision of their differences to a legislative assembly to be convened for that purpose according to any existing law, or any newly-devised form, by which the

[1] Blackstone's Preface to *Magna Carta*; Matthew Paris; Ralph of Coggeshall.

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authority of the whole nation might be given to any compact, etc. It is also remarkable that no article has reference to the previous existence of any assembly for the purpose of general legislation, nor contains any provision for the calling of any such assembly in future, or any provision purporting the existence by law of any representative system, for the purpose of general legislation, though the election is provided for in each county of twelve knights to inquire of bad customs to be abolished according to the Charter. But the provisions referring to the convention of an assembly for the purpose of assessing the extraordinary aids and scutage, or the conversion of military service due by tenure into a money payment, were very clear. A representation by knights elected by the several counties, as forming a constituent part of the common councils of the realm, was not then established by law.[1]

Charter confirmations.

The confirmations of the Great Charter have been almost countless. That of the ninth year of Henry III. is the one upon the Statute Book; but there were fifteen confirmations in Edward III.'s reign alone, while Sir Edward Coke cites thirty-two instances in which it was accepted and ratified. Solemn excommunication, accompanied by awful threats, was frequently pronounced against the violators of *Magna Carta*. Whenever the king wanted a subsidy he would swear to observe the Charter.

Spirit and effect of the Great Charter.

Regarding the spirit and purport of the Great Charter, it is partly a declaration of rights, partly a treaty between Crown and people. The legal limits of the power of the Crown in two matters of paramount importance are clearly defined. First, there is the right of at least all tenants-in-chief, personally, or by their representatives, to be parties to the grant of any scutage or aid other than the three customary aids; and secondly, there is the right of every free man to the free course of justice. The cardinal principles of the Charter recognise that

[1] Report on the Dignity of a Peer.

representation is a condition precedent to taxation, and that the law is the same for all. England now found itself, for the first time since the Conquest, a nation bound together by common national interests and a common sympathy. The "community of the whole land" is recognised as the great body from which the baronage derives the validity of its power. "There is no distinction of blood or class, of Norman or not Norman, of noble or not noble. All are recognised as Englishmen, the rights of all are owned as English rights. Bishops and nobles claimed and secured at Runnymede the rights not of baron and churchman only, but those of freeholder and merchant, of townsman and villein. It is in this way that the Great Charter marks the transition from the age of traditional rights, preserved in the nation's memory and officially declared by the Primate, to the age of written legislation, of Parliaments and Statutes, which was to come." But the English barons who exacted *Magna Carta* claimed no right of assent to the issuing of royal ordinances, no right of summoning a *cour de baronie*, and demanded no conventions assembled to deal with the grievances of the nation, or generally with the voting of taxes. Hence the Charter contains much less of formal constitutional law than has been looked for in it, though the leading traits of the English character and constitutional system appear therein. "Its origin and its confirmations kept alive for centuries the feeling of the community of certain fundamental rights for all classes, and the consciousness that a nobility cannot possibly assert rights and liberties without also guaranteeing to the weaker classes their personal liberty. By *Magna Carta* English history irrevocably took the direction of securing constitutional liberty by administrative law." One of the greatest clauses in the Charter is that which asserts in legal form the legal right of Englishmen to withstand oppression. If the king broke his promises, he was to be resisted in arms in the name of the powers which Englishmen held to be greater than the king—in the name of God, the law, and the great council.

CHAP. II. John and the Great Charter.

To sum up: "The Great Charter is the first great public act of the nation, after it has realised its own identity; the consummation of the work for which unconsciously kings, prelates, and lawyers have been labouring for a century. There is not a word in it that recalls the distinctions of race and blood, or that maintains the differences of English and Norman law." It is "the act of the united nation, the Church, the barons, and the commons, for the first time thoroughly at one. It is in form only the act of the king; in substance and in historical position it is the first effort of a corporate life that has reached full consciousness, resolved to act for itself, and able to carry out the resolution." Three elements of our parliamentary constitution—lords spiritual, lords temporal, and knights of the shire—were fully established by the Charter, although another struggle was necessary for securing the direct representation of the growing towns of England.[1]

John's engagements under it.

By the Charter John undertook to surrender all other charters and hostages placed in his hands as securities, and as soon as the pacification was completed to dismiss all his foreign mercenaries, and forgive and recall those whom he had disseised or exiled. Then he engaged to reform, on the principles already adopted, the forests made by his father and brother, and to do justice in other ways, the promises made in the earlier part of the Charter having no retrospective validity. The rights of the oppressed Welsh people were to be determined and recognised; justice was to be done to the Welsh princes and the King of Scots; and a general amnesty was to be declared for all political offences arising out of the existing quarrel.

A Council of enforcement.

But how was the due observance of the Charter to be secured, when it was only granted by John under compulsion? A council of twenty-five barons was chosen

[1] Gneist's *History of the English Constitution*; Sir W. R. Anson's *Law and Custom of the Constitution: Parliament*; Freeman's *Norman Conquest*; Green's *History of the English People*; and Stubbs's *Constitutional History*.

from the general body, who were to enforce on John the observance of the Charter, with the right of declaring war on the King should its provisions be infringed; and it was provided that the Charter should not only be published throughout the whole country, but sworn to at every hundred-mote and town-mote by order from the King.

The contest resumed.

John made considerable show of carrying out the work of pacification, but he had no real intention of observing the compact; indeed, he exclaimed in a furious outburst, "They have given me five-and-twenty over-kings." Within a very brief period King and barons were preparing to continue the contest. John appealed to the Pope, and Innocent III. annulled the Great Charter by a bull, afterwards excommunicating the barons in violent and denunciatory language. On August 16th the bishops met at Oxford, and the barons at Brackley. John appeared at neither place, but sent to the bishops instead a papal letter of excommunication, commanding them to enforce it against his enemies. Efforts at negotiation failed, and the papal sentence was published at Staines on the 26th. John and the barons were now at mutual defiance.

Divisions among the barons.

The war preparations were pushed forward in earnest. The baronial party, led by Robert Fitz-Walter and Eustace de Vesci, resolved to seek foreign aid, and, throwing off their allegiance to John, sent over an offer of the crown to Lewis, the son of Philip of France. The barons were between two alternatives—their own extinction or a foreign ruler. Meanwhile, John's forces had some notable successes. But the King was compelled mainly to rely upon such unpopular and unscrupulous foreigners as Falkes de Breauté, Savaric de Mauleon, and Peter de Mauley, instead of giving his confidence to such nobles as William Marshal, the great Earl of Pembroke, and Hubert de Burgh, who had been appointed justiciar in 1215.

The crown offered to Lewis.

The arguments which Philip of France used with the papal legate Cardinal Gualo on behalf of his son Lewis,

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were—that John's gift of his kingdom to the Pope was void, that he had been condemned for treason to Richard, and was never really a king. It was claimed for Lewis that his children at least would come of the old stock by the spindle-side, seeing that he was the husband of Blanche of Castile, a granddaughter of Henry. So Lewis was chosen, although the Pope decided in favour of John. The choice of Lewis was unwise, though unavoidable, for it led to a revulsion of English feeling.

Death of John.

On the arrival of Lewis in England, John's French followers would not fight against him, while the capture of Winchester on June 14th led the hesitating earls to desert John. Lewis pressed forward, gaining other victories, and receiving the homage of the King of Scots. The situation for England was a complex one. John was perfectly unendurable, and yet the foreign prince was scarcely a lesser evil. Fortunately, the Gordian knot was cut by the death of John. He was seized with a fatal illness at Sleaford on October 14th, 1216, and expired at Newark on the 19th. The general consensus of opinion stamps him as the worst of all our kings. He was vicious, treacherous, and ungrateful; faithless to his oaths, relentless in his lust, and tyrannical to his people. He had considerable abilities and accomplishments, and no small share of personal valour; but otherwise his character presented not a single redeeming virtue.

The English nation and the King.

The period which began with the reign of Henry II. and closed with the death of John is very interesting from the administrative and representative points of view. It witnessed the realisation of the national unity, and the extinction of the Danish, the West-Saxon, and the Mercian legal distinctions. It also witnessed great progress towards unity in the use of the English language. There was further a commixture of institutions and a notable growth in the common law. The views of kingship tended towards absolutism. Richard I. and John forsook the time-honoured practice of issuing a charter of liberties at their coronation. All the kings before

John "had called themselves on their great seals kings of the English. John is the first whose title appears on that solemn and sovereign emblem as *Rex Angliæ*."[1]

The National Council.

The national council still wore somewhat of a double aspect; while not dropping altogether the character of a feudal court, it was in a state of transition towards the representation of estates. There was a considerable stride "towards the concentration of the representation of the counties in the national Parliament—the combination of the shiremoots with the Witenagemot of the kingdom." The Royal Council, as distinct from the mere assembly and court of the household, might consist of either the greater barons of the Conqueror's reign; of the whole body of tenants-in-chief, as was the custom under Henry II.; or of the whole body of landowners, as was the case in the great councils of 1086 and 1116. These three possible assemblies might be regarded as the national assembly in its ordinary, extraordinary, and theoretical form.

Writs of summons.

The use of writs of summons in calling the council was very ancient, but the date when this became the general rule cannot be fixed. The writs of summons were of two kinds. The barons and others who dealt with the King received from him a direct personal summons, whereas the tenants-in-chief, who transacted business with the sheriff, were convened by a general summons, and not by a particular writ addressed to each one. Very few early writs are in existence, and the most ancient is one addressed to the Bishop of Salisbury in 1205. Of the general forms of summons addressed to the sheriffs, we have no specimens earlier than the date at which representative institutions had been to a great extent adopted. The writ by which the Council of Oxford was summoned in 1213—the writ being dated November 7th at Witney—is the first extant evidence of the representation of the counties in Council.[2]

[1] Stubbs's *Constitutional History*.

[2] *Select Charters*.

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The times of holding the councils were very irregular. The name generally given to them was the Latin term *colloquium*. The name of Parliament was used as early as 1175 by Jordan Fantosme, but it was first used in describing a general assembly of the English barons by Matthew Paris in 1246 ; and in a record of the 28th year of Henry III. the assembly in which the Great Charter was granted was spoken of as the *Parliamentum Runimedæ*. The subjects of deliberation were very various, but no opposition to the royal will was tolerated. Documentary remains of the legislation enacted are very sparse, and the formal edicts known under the name of Assizes — such as the Assizes of Clarendon and Northampton, the Assizes of Arms, Forests, Measures, etc.—are the only relics of the legislative work of the period. Even these are not drawn up in the form of perpetual statutes, but are rather enunciations and declarations of new methods of judicial procedure. The Assize is a term peculiar to this period of English history, as the form of Provisions marks the legislative period of Henry III., and that of Statute and Ordinance belongs to that of Edward I. and his successors. Although legislation was one of the nominal rights belonging to the whole council as representative of the nation, the period of national as distinct from royal legislation only "begins when the council has reached its constitutional development as the national parliament." The Great Charter was an anticipation of this time.

Regulations touching the Council.

Taxation.

With regard to taxation, the Norman kings generally stated when they required a scutage, and forthwith took it; and it was not until towards the close of Richard's reign that there was anything like a formal grant, or discussion of a grant, in the national council. Yet there are instances showing that taxation was a subject of deliberation, although those in council were not charged with the authoritative imposition of the tax. The opposition to taxation was personal and not representative. The principle that representation should accompany taxation was of gradual growth ; and even at the time of the

Great Charter the axiom of taxation by the nation itself had not been formulated.

Its Incidence.

There is little to be said of the indirect taxation of the period, which was not of moment; but with regard to the incidence of taxation generally, "each division of property was brought under contribution at a different period, and for each there was a distinct name and method of taxation. All the imposts of the Anglo-Saxon and Norman reigns were, so far as we know, raised on the land, and according to computation by hide"; and to this rule there were only very occasional exceptions, as when the churches claimed entire exemption and boroughs paid a composition. Henry II., however, brought under contribution the lands held by the churches, and in the Assize of Arms of 1181 he introduced the taxation of goods.

The Army and Navy.

With regard to the army and navy, the mercenary force of both, so far as maintenance was concerned, was "dependent on no authority but that of the king, who paid its expenses, as he did all other national and personal expenses, out of the general fund accruing to the Exchequer, over which the national council neither possessed nor as yet asserted any claim."

Privileges of the Boroughs.

The privileges of the boroughs grew rapidly under John, being obtained by fine and charter. In some instances the town constitution was poor and inadequate, but in others—Oxford and Winchester, for example—the communities had extensive rights. But even in London—which possessed the most perfect constitution—there was a lack of consolidation in the municipal power. The first certain instance of the use of the title of Mayor appears to have been in London. The concession of the *communa* to the city by Earl John and Walter of Rouen, in 1191, is followed at once by the appearance of a mayor, Henry Fitz-Alwyn, who retained the office for life. But in 1215, three years after the death of Fitz-Alwyn, John, to win the support of the citizens, conceded to the barons of London by charter the right of annually choosing their mayor. The person elected, however, was to be approved by the King.

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As the towns have for centuries played an important part in English politics, it will be of interest here to adduce some further particulars concerning them. It is to the reign of John—according to the evidence of the Rolls—that the possession of a mayor in such great cities as Bristol, York, Norwich, Lincoln, and Winchester is originally to be traced. Local lists of mayors assigning earlier dates are regarded as untrustworthy. Town politics in the thirteenth century turned chiefly on the question as to whether the aldermen or the populace were to elect the mayor. The struggle in London during the Barons' War was of great importance, the commons siding with De Montfort and the magnates with the King. The popular party were successful, and secured the election of their own candidate in 1263-65; but the triumph of the royal arms at Evesham in the latter year led to a suspension of the city constitution altogether. For several years the town remained under a "custos," and not a mayor; but in 1273 the aldermen, supported by the Royal Council, regained their power. Popular violence and attempts of the magistracy to extend its powers were frequently punished by a suspension of the town constitution. London, for example, was without a mayor from 1285 to 1298, because the chief magistrate had endeavoured to gain exemption for the city from the jurisdiction of the justices in eyre. The craft guilds, which sprang up in the fourteenth century, strove to obtain control of the administration, including the election of the mayor, and they were successful in the reign of Edward IV.

Town politics and struggles.

Provincial conflicts.

Other great towns followed London in their lines of development. There was the same struggle of the magnates against the commons for the election of the mayor, and against royal interference, together with the occasional nomination of a custos, and the increasing importance of the trade societies. There was a contest at York between the aldermen and the people in 1381, contemporaneous with the Peasant Revolt. Richard II., in conferring a new charter upon York in 1389, gave the mayor his own sword; and after this he assumes the

title of Lord Mayor, which had hitherto only been borne by the Mayor of London.

The Great Charter an impetus to freedom.

Under the impetus awakened by the Great Charter, as strengthened by frequent renewals, Englishmen began to grow in freedom, and in happiness and comfort. There were still many struggles to go through before the people could obtain a direct share in the representation, but the new reign of justice could not be put back, in spite of the aberrations of the sovereign who succeeded John. The Englishman, who was formerly little better than a slave, was now at least a person of growing dignity and importance, alive to his interests and to the necessity for perfecting and extending the rights which he had achieved. The good work was not allowed to lie fallow, and there is no more interesting period in our Parliamentary history than that which began with *Magna Carta* and culminated in the legislative reforms of Edward I.

BOROUGH OF LEWISHAM

CHAPTER III.

THE WORK OF SIMON DE MONTFORT.

Henry III. and De Montfort.

THE reign of Henry III., in its representative or parliamentary aspect, is inextricably interwoven with the career of Simon de Montfort, who has usually been spoken of as the creator of the House of Commons. But a long period elapsed after Henry's accession ere De Montfort began to make his power felt; and this period must claim our attention before I describe Simon's efforts for the remodelling of the legislature. Henry's reign was a series of conflicts with the barons and the people. The sovereign was weak and irresolute, and though he could not put back the wheels of progress he caused them to drag heavily.

Henry's coronation.

Henry was crowned at Gloucester on October 28th, 1216, being then only nine years of age. A great council was held at Bristol on November 11th, when the Earl of

Pembroke chosen Regent.

Pembroke was by common consent chosen regent, or "governor of the king and kingdom"; and with him were associated as councillors the legate Gualo, and Peter des Roches, Bishop of Winchester. The Great Charter was reissued, but with the omission of the constitutional clauses affecting taxation and the national council, the articles touching the debts of the Jews, the royal forests, etc. As the baronage stood for the time being in the place of the King, and the nation was at war, the executive

could not be crippled in its resources or limited in its taxing powers. It is curious that not only were the constitutional clauses omitted now, but they were not imposed upon Henry at a much later period when the barons triumphed after the Parliament of Oxford. But the Charter as a whole became the central point of union, and by another instrument the same liberties were granted to the people of Ireland.

The struggle with France.

In the spring of 1217 Lewis of France—who, as already observed, had been called in by the barons in consequence of the tyranny of John, and offered the English crown—secured several victories in the eastern counties; but he was ultimately defeated, and agreed to retire on payment of a stated sum. The liberties of London and other large towns were confirmed; prisoners on both sides were released; and the Charter in its modified form was again proclaimed. A new charter of relief relating to the forests was also issued.

Reissue of the Great Charter.

With regard to the reissue of the Great Charter in 1217, "it differs from the two earlier editions in several points: it does not contain the respiting clause of 1216, although it provides a substitute in its 46th article, reserving to all persons, lay and clerical, the liberties and free customs they possessed before. Two new clauses form a germ of later legislation: the 39th—which directs that no freeman shall henceforth alienate so much of his land that the residue shall be insufficient to furnish the legal services due to his lord—is said to be the first legal restraint on alienation on record in this country, and, in another aspect, contains the principle of the statute *Quia Emptores*; the 43rd, forbidding the fraudulent transfer of lands to religious houses, stands in the same relation to the statute *De Religiosis*; the 47th clause, again, which orders the destruction of adulterine castles, and the 44th, which provides that scutages shall be taken, as in King Henry's time, may show that in some points the current of recent history had been retrogressive. The 42nd article orders the county court to be held monthly, and the sheriff's tourn, which now first

CHAP III. The work of Simon de Montfort.

appears in the Charters, twice a year. The same clause also regulates the view of frankpledge, and affords the first legal evidence of its general obligation. This reissue presents the Great Charter in its final form; although presently re-published and confirmed, the text is never again materially altered."[1]

Death of Pembroke.

The Regent Pembroke, whose reissue of the Charter testified to his desire for constitutional government, died early in 1219. The management of affairs now passed into the hands of the able Hubert de Burgh, the Justiciar, and the new legate Pandulf, who had succeeded Gualo; while Peter des Roches acted as the King's guardian. The bishop supported the foreign influences, which were strongly opposed by Langton and Hubert.

Henry's second coronation.

Anarchy almost ensued, but Hubert de Burgh acted vigorously, and the second coronation of Henry, on May 17th, 1220, was an additional guarantee for the restoration of order and good government. In a few years the royal castles, which had been seized by the barons and foreigners, were surrendered to the Justiciar. Peace reigned, and England was also freed from a Papal legate. The fall and banishment of Falkes de Breauté consolidated the power of Hubert, and for a time completely crushed the foreign influence. In the year 1224 an expedition was planned to Poitou, and at the Christmas court of that year the Justiciar demanded a fifteenth of all movables. He was met by a petition for the reconfirmation of the Charters,—which had already been twice confirmed since the last issue—namely, in 1218 and 1223—and they were now promulgated afresh with no material alteration, except in the enacting words, which now read, "by the spontaneous and voluntary goodwill of the King," instead of "with the counsel of the barons." While this seemed to open the way to legislation by the king's sovereign authority, on the other hand the granting of the subsidy was made contingent upon the promulgation of the Charter, and this established

[1] Stubbs's *Constitutional History.*

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the principle that redress of wrongs precedes a grant to the crown.

Henry assumes the government.

Henry declared himself of age to govern in 1227, and in a council held at Oxford in January he formally announced that from henceforth he should regulate the affairs of the kingdom by himself. It is true that Hubert was continued in the Justiciarship, and was created Earl of Kent, but Peter des Roches went abroad. The spirit of Henry's new government may be gauged from the fact that he cancelled the two Charters, "as made and signed when he was not his own master, and he was not bound to keep what he was forced to promise."[1] With the consent of the council he issued letters directing that all who had received charters should apply for their renewal, and the renewal was to be purchased at a valuation fixed by the Justiciar. He obtained £100,000 by the repurchase of the grants imperilled, and a tallage was taken of the town and demesne lands of the crown.

Councils and Ministers.

From the minority of Henry III. is to be traced the growth of the King's inner council, as distinguished from the *curia regis* under Henry II., and also from the common council of the realm. The Sovereign's personal advisers began to acquire a distinct position as an organised body, of which the purely administrative section formed only a part. It is also to be noted, as a point of importance, that the common council of the realm now claimed the right of nominating, or confirming the nomination of the great officers of state—the Justiciar, the Chancellor, and the Treasurer. Ralph Neville received the chancellorship and the great seal in 1226, by appointment of the common council of the kingdom; and ten years later he refused to resign his office without a requisition from the same body. This points to the spread of the theory of a limited monarchy combined with ministerial responsibility.

Death of Langton.

Stephen Langton died in 1228, and the cause of national freedom was the loser by his death. It was only by the

[1] Matthew Paris.

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promise of a heavy subsidy that Henry, in 1229, could buy the Papal confirmation of Langton's successor, Richard le Grand. The Pope also demanded an aid from the laity; but the baronage refused it, denying his claim to overlordship. The clergy, however, were in subjection, and Gregory IX. exacted from them a tithe of all their movables under pain of excommunication. Exactions followed each other in quick succession, and presentations to English benefices were sold in the Papal market.

Papal exactions.

Fall of Hubert de Burgh.

Meanwhile Hubert's power was declining. He had encouraged the opposition of the barons to the Pope, and opposed the design of Henry's Gascon campaign in 1229. He was deposed from the justiciarship in 1232. Stephen Segrave was appointed in his place, but for the next twenty-six years Henry practically governed alone. Hubert had done valuable work. By his policy he sought to strengthen the crown and humble the aliens, and altogether he was too fair a minister for the time. Peter des Roches recovered his influence over Henry; and when the King complained that he could not get any money from the council of the barons, in March 1232, the bishop recommended him to dismiss the ministerial staff, which he forthwith proceeded to do. Hubert was summarily dismissed on July 29th; and among the charges immediately preferred against him were several similar to those which had been brought against Becket, and which were afterwards brought against Wolsey and Cromwell. First, an account was demanded of him of all sums received during his tenure of office as Justiciar, and an answer to all complaints of wrongs at which he was said to have connived. Secondly, it was complained, with regard to foreign affairs, that Hubert had defeated a proposal to marry Henry to a daughter of the Duke of Austria; that he had first corrupted and then married the sister of the King of Scots; that he had stolen from Henry, and given to the Prince of Wales, a talisman which rendered its wearer invulnerable; and that he had contrived that William de Braiose should be hanged as a thief. Thirdly, he was reputed to have poisoned the

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Earl of Salisbury, the young Earl Marshal, Falkes de Breauté, and Archbishop Richard; also that he had kept the king under his influence by witchcraft, and in contempt of the rights of the city of London had hanged Constantine Fitz-Alulf. Hubert fled to Merton, and refused to present himself for trial. Journeying to St. Edmund's, he was taken from the chapel at Brentwood and lodged in the Tower. He was brought before a tribunal of earls and judges, but Henry allowed himself to be soothed by the surrender of his victim's treasures, the restoration of acquired estates, and the security of four earls for his good behaviour. Henry felt that some defence was needed for his questionable and extra-judicial proceedings against Hubert, so he put forth a manifesto in the form of letters patent. The only distinct charges made were the wrongs inflicted, contrary to the King's peace, on the Pope's envoys and the Italian clerks; while the document itself was a virtual admission that the nation had a right to know why the Justiciar was dismissed.

Peter des Roches and the foreigners.

With the death of the Earl of Chester, which occurred at this time, there passed away almost the last relic of the great feudal aristocracy of the Conquest. Ranulf had been a strong opponent of royal and papal exactions. Peter des Roches now strengthened his hold upon the King, and the English servants of the household were removed to make way for Bretons and Poitevins. The Earl Marshal, Richard, second son of the Regent, who seemed to have succeeded to his father's patriotism as well as his estates, headed a new opposition to the sovereign and his minister. The King summoned a council at Oxford on June 24th, 1233, but the earls and barons refused to attend. Henry was assured that, so long as the influence of the Bishop of Winchester prevailed, there could be no peace for the kingdom. The King called a new council for July 11th, and intimated that he would concede all necessary reforms if the barons would meet him at Westminster. The barons insisted on the dismissal of the bishop, and threatened to summon the common council of the realm and elect a new king. On August 15th a general

Hostility of the Barons.

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assembly of all the military tenants of the crown met at Gloucester, when the Earl Marshal was declared a traitor, and a day appointed for his trial. At an angry sitting at Westminster, on October 8th, the barons denied the legality of the proceedings against the Earl Marshal, and demanded that he should be tried by his peers. Peter des Roches insolently replied that there were no peers in England as in France, and that the King was perfectly right in condemning and proscribing his enemies through his justices. This created a furious storm against Peter of Winchester, and the bishops threatened to excommunicate him. Civil war broke out, and Henry was defeated at Monmouth; but the Earl Marshal was treacherously lured over to Ireland, and being overwhelmed by his enemies was mortally wounded on April 1st, 1234, dying in prison on the 16th. It is thought that, had he lived, he might have anticipated the patriotic action of Simon de Montfort. His death left the opposition without a recognised head for many years.[1]

Death of the Earl Marshal.

Peter dismissed.

But the hostility to Peter des Roches gathered force. Edmund Rich was consecrated Archbishop of Canterbury on April 2nd, 1234, and his first act was to wait upon the King, and insist on the reform of abuses and the dismissal of his evil advisers. A lengthy list of grievances was presented to Henry on April 9th, and under fear of excommunication he yielded. Peter of Winchester was told that he must henceforth confine himself to his spiritual duties; and Peter de Rivaux, the Treasurer, and Stephen Segrave, the Justiciar, creatures of the bishop, were dismissed from their offices, and called to strict account for their stewardship.

Henry's government.

Henry proceeded to govern alone, and as all the inimical foreign influences had been removed there seemed a good augury for the future. But the King was weak and incompetent, and unable to exist without favourites; so in course of time he fell under the old spell. In the

[1] Stubbs's *Constitutional History*.

year 1235 the King's sister, Isabella, was married to the Emperor Frederick, and a national council summoned by Henry on the occasion made a grant of two marks on the fee. In the ensuing January the King himself espoused Eleanor, the second daughter of the Count of Provence, and sister of the Queen of France. She was accompanied to England by her uncle, William, Bishop of Valence, who speedily acquired supreme influence over the irresolute monarch.

The Statutes of Merton.

On January 23rd, 1236, the barons assembled in a great council at Merton, and enacted certain statutes, which are sometimes described as "the provisions of Merton." Anxious to show their distrust of the foreign influences which might be expected from the marriage of Henry and Eleanor, the barons solemnly and formally recorded their determination not to change the laws of England. The Statutes of Merton, which declared against the legitimisation of children by a subsequent marriage, were the most ancient body of laws after *Magna Carta*; and they were not repealed until the year 1863.

The foreigners recalled.

The fears of the barons were not groundless, for Henry attempted to substitute for the common council of the kingdom a body of twelve counsellors with William of Valence at their head. This caused such a storm that Henry was obliged to seek temporary refuge in the Tower. He made sundry promises of good government, but almost immediately afterwards recalled the most unpopular of his late ministers, and permitted Peter des Roches to return to his see. Titles and estates were lavishly distributed amongst the foreigners. The court was filled with Poitevins, Savoyards, and Gascons, while nameless Italian monks were appointed to the highest Church benefices; and these were found to be receiving a revenue considerably larger than the King himself. It was consequently necessary for Henry to apply frequently to Parliament for aid; but it is not surprising to find that the barons refused to make the grants.

The King's necessities.

At an extraordinary assembly of barons and prelates, held on January 13th, 1237, a statement of the King's

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necessities was produced. Henry proposed to give the barons the control of the expenditure: but they declared in reply that there was no ground for these constant demands: as the King was not engaged in any great enterprise, he must be wasting his money on the aliens. Henry again promised reforms, offering to dismiss his counsellors and to accept as advisers three nobles to be named by the barons, as well as to excommunicate all who impugned the charters. A grant of a thirtieth of movables was ultimately made, but Henry failed to initiate the promised reforms.

Simon de Montfort.

At this juncture Simon de Montfort first appears prominently on the scene.[1] De Montfort is one of those few figures in our national history who are at once as picturesque as they are commanding. He was the man of an epoch. Though thrown upon an age that was only just emerging from under the shadow of barbarism, he stood forth a type of all that is high-minded and chivalrous: while he towered above his contemporaries in force of character, courage, and intelligence. As the illustrious pioneer of our system of Parliamentary government, as well as the pilot of a dark and stormy age, his life-work demands from posterity a more than passing consideration or a merely ephemeral recognition.

His ancestors

The cradle of the De Montfort family was a stronghold still known as Montfort l'Amauri, which lies between Paris and Chartres. According to a traditional pedigree, the first of the name is reputed to have been the grandson of Judith, daughter of Charles the Bald, and

[1] For the ensuing account of the Barons' War against Henry, and the career of Simon de Montfort, the following are the modern authorities: Reinhold Pauli's *Simon de Montfort, Earl of Leicester: The Barons' War, including the Battles of Lewes and Evesham*, by W. H. Blaauw; *Life of Simon de Montfort*, by G. W. Prothero; Stubbs's *Constitutional History* and *Select Charters*, and Pearson's *History of England*. The earlier and contemporary authorities are: Matthew Paris, *Annals of Barons*, and Matthew of Westminster; with the *Monumenta Franciscana*, *Grosseteste's Letters*, and *Royal Letters of Henry III.'s Reign*, in the Rolls Series.

Baldwin Bras-de-fer, Count of Flanders. Their son William married the heiress of Montfort and Epernon, and their child, Amaury II., not only gave his name to the family possession, but is the first indubitably historic scion of the house of De Montfort. He was succeeded by his son Simon, who really established the power and influence of the family by his marriage with the heiress of Richard, second Count of Evreux. This union with a descendant of Duke Richard I., great-grandfather of William the Conqueror, gave Simon de Montfort I. a position equal, as regards birth and ancestry, to that of the Norman kings of England. It was in the lifetime of Simon III., however, and in the reign of Henry II., that the intimate relations of the De Montforts with England originated. This Simon, Lord of Montfort and Evreux, married the sister and co-heiress of the Earl of Leicester. Their second son, Simon, who was the leader of the Albigensian crusade, came into the title and half the estates of the earldom of Leicester, and married Alice de Montmorency.

The great Earl Simon.

Simon, the fourth and youngest son of this marriage, became the great Earl of Leicester, the resolute opponent of Henry III., and the fearless assertor of the liberties of England. Born in 1208, at ten years of age he was called upon to mourn the loss of his father, who in 1210 had been deprived of his English estates. Amaury and Simon were the only surviving sons; and the former having resigned his English rights to his younger brother, Simon de Montfort came over to England in 1230 to try his fortune. The earl's coronet was revived for him, and by his marriage, in January 1238, with Eleanor, Dowager Countess of Pembroke, and sister of King Henry, he soon acquired a position of great prominence in the realm. Simon's investiture as Earl of Leicester took place in 1239. He became one of the counsellors of the crown, and not long afterwards acted as godfather at Prince Edward's christening.

From this period De Montfort's career was bold and romantic. He had just those qualities to fire the popular

CHAP. III. imagination. Beloved of the clergy because of his earnest piety and delight in the society of learned men, he was an equal favourite with the barons because of his chivalrous spirit and political prescience. In course of time also his name became a talisman amongst the people. Political events first caused him to stand forth from the pampered body of foreign nobles which constituted the court of Henry.

The work of Simon de Montfort.

A favourite in England.

First reported Parliamentary debate.

The King called a Parliament in London on January 28th, 1242, in anticipation of a war with France. The proceedings were formally recorded, and are stated to be the subject of the first authorised account of a parliamentary debate. The King's demand of an aid for the recovery of his foreign possessions was made known by Earl Richard, Archbishop Walter Gray, and the Provost of Beverley. The assembly took a firm tone in their reply. They urged that before the King went to war he would do well to await the termination of the truce by which he was bound to France, and try to prevail on Lewis to do the same. They reminded the sovereign that they had been very liberal in former years: early in the reign they had given a thirteenth, in 1225 a fifteenth, in 1232 a fortieth, a large aid for the marriage of Isabella in 1235, and a thirtieth in 1237; besides carucages, scutages, and tallages. Although the grant of 1237 had been specially guarded as to custody and expenditure, no account of it had been rendered, and it was still believed to be in the King's hands. In addition to these extraordinary sources of revenue, "the King had enormous resources in the escheats, the profits of vacant churches, and the like; and for five years the itinerant justices had been inflicting fines which impoverished the innocent as well as the guilty. If, however, the King would wait for the expiration of the truce, they promised to do their best. Henry, professing himself satisfied with the reply, asked next what, if he should wait, their grant would be. They answered that it would be time to consider that when the case arose; as for the promises of reform with which he tried to stimulate their liberality,

they said that they were not disposed to try the question with the King; they knew too well how he had kept the engagements made in 1237." Lest the answer of the barons to the King should be forgotten or misconstrued, it was thought proper to reduce it into writing, and this forms the first protest to be met with in our Parliamentary annals.

Henry defeated in France.

Henry was wroth, and next endeavoured to deal singly with the prelates and barons, but without result. However, he managed to gather money enough for a costly expedition for the recovery of Poitou. He went over to France, but the English troops fled in disgraceful rout at Taillebourg, and Henry was obliged to conclude a humiliating truce, and to resign all claim upon Poitou. After this there was a great influx of Poitevins into England, while the Earl of Cornwall was drawn from the barons' side by his marriage with the Queen's sister, Sanchia of Provence. His desertion of the popular cause opened the way for De Montfort as leader of the opposition.

Simon in Gascony.

But this did not at once occur. After the campaign in Poitou, Simon lived for five years quietly on his Leicester estates, in the enjoyment of the friendship of the learned Grosseteste of Lincoln and of Adam de Marisco. In 1248 he was summoned from his retirement to become Lieutenant of Gascony. He returned to England in the winter of 1252-3, and contented himself with watching the course of events.

Parliament of Westminster, 1244.

Reverting to the political thread of our narrative, in 1244 Henry summoned another Parliament at Westminster. Sitting in state with the barons, the King "with his own mouth asked a pecuniary aid from them." His private intention was to reduce the King of Scots; but openly he pretended that, having by their advice passed into Gascony the year before, by that undertaking he had contracted great debts, from which he desired them to relieve him. The barons answered that they would consult about his proposal, and withdrew. The prelates, the earls, and the barons all deliberated apart. Then the prelates asked the earls and barons to consent

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A committee of twelve.

to what they had resolved upon; but the barons replied that they could do nothing without the whole community. A committee of twelve was then chosen from the bishops, earls, and barons, who made reply to the King that the Charters, although often confirmed, were never observed; that the money so freely given had never been spent for the good of the kingdom or of the realm; and that, owing to the want of a chancellor, the great seal was often set to writs that were contrary to justice. They therefore demanded the appointment of a justiciar, a treasurer, and a chancellor, by whom the state of the kingdom might be strengthened. Henry would not grant the petition on compulsion, but promised to amend what he had heard was amiss. The assembly was then adjourned for three weeks. When it again met, the King renewed, and promised entirely to keep, the charter of liberties, and gave the bishops leave to excommunicate himself and all others who should act contrary to its intent in any article. Yet for all this he could only obtain twenty shillings of every knight's *fee*, of those who held of the king *in capite*, towards the marriage of his eldest daughter.

First use of the word "Parliament."

The first general application of the word "Parliament" to a national assembly occurs under the date of March 18th, 1246, a period precedent to the use of the distinctive title in the Statutes.[1] On the day mentioned "a most general Parliament of the whole nobility (magnates) of the kingdom assembled at London, according to the King's summons."[2] The prelates, bishops, abbots, priors, earls, and barons were present, and the King addressed

[1] John of Brompton, however, had employed the word Parliament long before; and the writ directed to the sheriff of Northamptonshire in 1244 incidentally described the meeting at Runnymede as a "Parliamentum." (See p. 106 of this work.)

[2] Bishop Stubbs does not refer to this first use of the word "Parliament," but in a footnote he gives the date of the Assembly as March 18th, 1245. This must be a mistake, for all the early authorities—Matthew Paris, Hody, and the *Burton Annals*—give the year as 1246.

them severally on the Pope's exactions. Letters were addressed to the Pope on this subject. A further parliament is stated by Dr. Stubbs to have been held at Westminster, May 6th, 1246, when there was drawn up a list of grievances, which was sent to the Pope with special letters from each of the great bodies present,—the King, the bishops, the abbots, and the earls with the whole baronage, clergy, and people. The earls wrote boldly and well; but Henry, being threatened by the Pope, gave way, and Rome wrung six thousand marks from the English clergy.

Parliament of 1248.

Parliaments now followed each other in quick succession, the barons constantly reiterating their demand for the appointment of a justiciar, chancellor, and treasurer by the common council of the realm, and Henry constantly evading this, yet as repeatedly calling for aids. The exactions of Rome meanwhile continued. In 1248 a Council or Parliament assembled at Westminster, when "the whole nobility" of England attended. The assembly unanimously refused an aid. Driven to the very last expedients for obtaining funds, in 1252 and 1253 Henry solicited an aid for the purpose of undertaking a crusade against the infidels. Parliament saw through this ruse, and the clergy, who were also in stern antagonism to the King, sent the Archbishop of Canterbury, and the Bishops of Winchester, Salisbury, and Carlisle, to remonstrate with him upon his extravagance, as well as upon the irregular manner in which he disposed of Church dignities. Without promising amendment, Henry answered for once with spirit and telling sarcasm. "It is true," said he, "I *have* been in error on this point of improper promotions; I obtruded you, my Lord of Canterbury, upon your see; I was obliged to employ both threats and persuasions, my Lord of Winchester, to have you elected; and irregular, indeed, was my conduct, my Lords of Salisbury and Carlisle, when from your lowly stations I raised you to your present dignities." But to the Parliament he promised a reformation of both ecclesiastical and civil abuses; so that finally the council granted him a tenth

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of the ecclesiastical benefices and a scutage of three marks upon each knight's fee, on condition of his solemnly ratifying the Great Charter, while, with the ceremony of "bell, book and candle," they cursed whoever should henceforth violate it. In order to reap the substantial benefits which followed it, Henry, nothing loth, went cheerfully through the damnatory process. The strangest thing is that, although the King himself was involved in the curse which followed the violation of the oath, he was the first to break the solemn compact.

Knights of the shire in Parliament.

Having at length obtained funds, Henry went to Gascony, leaving the government in the hands of the Queen and Earl Richard. For the first time since the reign of John the knights of the shire were now summoned to Parliament. The regents called a great council at Westminster on April 26th, 1254, at which four chosen knights from each county, and representatives of the clergy of each diocese, were directed to report the amount of aid which their constituents were prepared to grant. At this election, and subsequently, the county court, or shire-moot, was used for the election of the knights and burgesses ; and the attendance of all, from archbishops to villeins, was required.

Parliament resists the King.

A new element of difficulty arose between the sovereign and Parliament, when Henry endeavoured to secure for his second son, Prince Edmund, the crown of Sicily. In October 1255 the magnates of the realm were summoned to Westminster. To the King's solicitation for an aid for the recovery of the kingdoms of Sicily and Apulia they replied that his Majesty had engaged in that business without his council and the assent of the barons, and that all had not been summoned according to the tenor of the Great Charter. They would therefore make no answer, or grant any aid, without the rest of the peers ; and in this independent spirit Parliament sat for a month, but transacted no business.

The King and the Pope.

In the chapter-house at Westminster, on March 25th, 1257, the papal ambassador, the Archbishop of Messina, laid before Parliament a statement of the King's debt to

the Pope. It reached a total of 135,000 marks. Henry, who was accompanied by his son Edmund in an Apulian dress, confessed his position, and declared that it was with the consent of the English Church he had accepted the throne of Sicily. Now he must either forfeit the kingdom or pay the Pope. He therefore demanded a tenth of the ecclesiastical revenue, the income of all vacant benefices for five years, and other contributions. The barons indignantly denied all knowledge of the matter, but, being coerced, granted a sum of 52,000 marks. It was calculated that already, during his extravagant rule, Henry had frittered away no less than 950,000 marks.

Leicester the popular spokesman.

Several important Parliaments were held in 1258. The first assembled at London on April 9th and sat until May 5th. The Welsh war and the rigorous demands of Rome formed the urgent business. Simon de Montfort appeared amongst the earls. The King had assured the Pope that, notwithstanding the attitude of the Parliament, he would still fulfil all his obligations if time were granted. The Pope replied with the sharpest menaces, which greatly exasperated the estates, and the Earls of Leicester and Gloucester gave voice to the popular resentment. Bitter complaints were made of the wealth and extravagance of the foreigners who crowded the court. The King used abusive language to the assembly; and his half-brother, William of Valence—son of Hugh de Lusignan, who had deserted to the French in 1242—dared to call the Earl of Leicester a traitor and a liar. "No, no, William," he scornfully replied, "I am neither a traitor nor a traitor's son. Our fathers were of a very different stamp." It was all that Henry could do to prevent the quarrel being decided by the sword. Simon frequently acted as spokesman in the fierce debates, charging the King with reducing the realm to destitution by mortgaging it to the Pope, and with granting such enormous favours to his minions that it was now impossible to shake off even such insignificant enemies

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as the Welsh. Henry was at length compelled to place himself in the hands of the barons. A committee of twenty-four—twelve chosen by the crown and twelve by the barons—were to enforce all necessary reforms before the following Christmas, and on this understanding the question of a money grant might be considered. Henry assented to the scheme, and Parliament was adjourned to June 11th, when it was to meet at Oxford. Meanwhile the barons would draw up the list of grievances, and formulate the scheme for a provisional government.

The "Mad Parliament."

Accordingly on June 11th the "Mad Parliament"—as it was called by Henry's partisans—assembled at Oxford. The barons, fearful of treachery from the foreigners, availed themselves of the summons to the Welsh war, and appeared in full military array. A long list of grievances was presented by the barons, touching the many points in which the King's officers had transgressed either the letter or the spirit of the charters. A commission of reform was demanded, and the King and the barons proceeded to choose their representatives upon the committee of twenty-four. Henry's side was very poor in great English names, and he was compelled to rely upon his relatives and those who were the tools of his government.

Provisions of Oxford.

Acting in the name of all the tenants-in-chief, the committee of twenty-four drew up new constitutional articles, which are known as the Provisions of Oxford. In the first place the charters were to be inviolably observed. Then they reserved to themselves the long-disputed right of appointing the justiciar, the chancellor, and the treasurer. A special resolution ordained that parliaments should be regularly summoned for October 6th, February 2nd, and June 1st. The King was to be assisted by a standing council of fifteen members, who were not only to act as the sovereign's private council, but to have a constraining power over all his public acts. These fifteen were to meet in parliament another body of twelve chosen by the barons, to discuss common business on

behalf of the whole community. The fifteen were to be selected by two persons chosen from the King's side and two from the barons' side of the committee of twenty-four. The twelve appointed to meet at the annual parliaments were chosen by the general body of the barons; another committee of twenty-four, chosen by the whole parliament on behalf of the community, was to treat of the aid which the king demanded for the war; and the reform of the Church was to be committed to the original twenty-four. The most influential of the barons served on both committees of twenty-four. The permanent part of this new and somewhat complicated system of government included the formation of a regular council and the reconstitution of the ministerial body, with the nomination of the officers of state and sheriffs. Hugh Bigod, a baron of proved integrity, was appointed justiciar, and the great seal remained in the hands of Henry of Wengham. All the offices of state and sheriffdoms were to be subject to annual election and audit.

Action of the barons.

The barons now called for the surrender of the royal castles, which were held almost exclusively by foreign favourites. A struggle ensued, in which the barons were victorious, and Valence and his brothers, Guy and Geoffrey of Lusignan, with their sympathisers, were banished from the kingdom. The barons, having filled all the important posts in the realm with persons upon whom they could confidently rely, finally administered an oath to all the lieges—from which even Earl Warrenne and Prince Edward, heir to the throne, were not exempt—to obey and execute the Provisions, under pain of being declared public enemies. The execution of the reforms was pushed forward. On June 26th Henry directed the four elected lords to nominate the council; on July 23rd London accepted the Provisions; on the 26th orders were issued for inquiry into abuses; and on August 4th the king agreed to abide by the decisions of his new council.

The provisional government acted without any interruption from June 1258 to the end of 1259, and peace was

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concluded with Wales, Scotland, and France, Henry finally renouncing his claims on Normandy in April 1260. But although the barons were triumphant, the laws they imposed were not calculated to endure, seeing that they practically eliminated the King from the constitution, without bringing in the authority of the people as a make-weight against the power of the nobles. For the tyrannical rule of the sovereign there was only substituted the government of an oligarchy.

The new Government.

The work of Reform.

The barons, who had proceeded from Oxford to Winchester, next moved on to London, where they resumed the work of formulating the necessary reforms. Many edicts were issued, but the resistance of Prince Edward now became an important factor on the royalist side. The barons put the Prince under four counsellors, and also began a reform of his household.

Henry jealous of De Montfort.

Nevertheless, while all promised well, the reforming zeal of the barons soon cooled down. Divisions arose amongst themselves, and there were powerful secessions. Then, too, there was the strong hostility of Henry towards De Montfort. The influence of Earl Simon temporarily declined. He was too enlightened in his constitutional views for some; suffered under the reproach of foreign extraction with others; while a third party regarded him as altogether too powerful a personage.

Leicester quarrels with Gloucester.

A violent quarrel took place in the Lent Parliament of 1259 between Simon and the Earl of Gloucester, hitherto his most influential associate. It was the popular feeling with regard to these two leaders that Gloucester desired power for its own sake, while Leicester desired it as a check upon tyranny in any shape, whether on the part of the King or the barons.

The Provisions of Westminster.

In the October Parliament of 1259 Prince Edward and the knights—acting apparently in conjunction with Earl Simon—put pressure upon the barons to proceed with their reforms ; and a series of remedial ordinances were issued known as the Provisions of Westminster. These provisions were in two versions—Latin and French. As finally enrolled, they remedied most of the complaints

A PARLIAMENT OF NOBLES AND BISHOPS AT WESTMINSTER. TEMP. HENRY I.

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH
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urged in the Oxford Petition; but they did not contain the stringent articles found in the French version, by which the county organisation was empowered to watch and limit the action of the council and the courts. The barons were all-powerful in the council, and when the commission of the twenty-four had ended they still moulded the policy of the council of fifteen. It was towards the close of 1259 that Henry went over to France and formally resigned his claims to Normandy. He returned in hot haste to England on April 23rd, 1260, in consequence of a reported plot between his son Edward and Earl Simon to dethrone him.

Henry recovers his power.

Matters were temporarily adjusted, and a reconciliation effected between the King and Prince Edward. Henry recovered a good deal of his power. In April 1261 he removed his justiciar, Hugh le Despenser—who had only been appointed in the previous October—and his chancellor, Nicholas of Ely, substituting in their places respectively Philip Basset and Walter de Merton. He next threatened the foreign followers of De Montfort with expulsion, and produced a Bull of absolution from the late Pope, Alexander IV., with letters of excommunication against all who should contemn it. A royal manifesto was likewise published, promising the confirmation of the rights and privileges of the people, but justifying the removal of the sheriffs and wardens of the castles appointed by the council. Upon this the leaders of the opposition—Leicester, Gloucester, and the Bishop of Worcester—summoned a council at St. Alban's, to which three knights of each shire were invited. This was an important recognition of the county organisation, and foreshadowed the enlightened policy of De Montfort and his friends. The King ordered the sheriffs to send the knights not to St. Alban's, but to Windsor, on September 18th. Matters were still in an *impasse*, when an attempt at pacification was made in London in October, but neither King nor barons would give way as to the right to appoint the sheriffs. Henry concluded a treaty on December 7th, and extended a pardon to all

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who should accept it before January 6th; and it was arranged that all questions in dispute should be adjusted by the following Whitsuntide.

Struggle over the sheriffs.

Henry in vain commanded his lieges to expel the sheriffs appointed by the council. The opposition took their stand on the Provisions of Oxford, and would recognise none but their own officers. The King of the Romans was requested to arbitrate, and at Easter 1262 he delivered judgment to the effect that the King alone had power to appoint and dismiss all judicial and administrative officers. A desultory war broke out, but an amnesty was proclaimed for the Earls of Leicester, Norfolk, and Warrenne, and eleven other nobles, who had all belonged to the committee of twenty-four, on condition that they signed a renunciation of the Provisions by Whitsuntide. Neither this measure, however, nor the renewal by Pope Urban IV. of the Bull promulgated by his predecessor, produced the desired effect.

Appeal to King Lewis.

Both Henry and Simon now appealed to the King and Queen of France as mediators, and Henry went over to France in July 1262, remaining there till Christmas. Lewis was perplexed between the contending parties, whom he equally favoured, and nothing definite was done. Meanwhile, the death of the Earl of Gloucester at this juncture left Simon the acknowledged leader of the opposition and the chief bulwark against the King. Henry, whose hands were already sufficiently full, provoked further opposition by issuing an ordinance on March 22nd, 1263, that the oath of allegiance should be taken to Edward. The Earl of Gloucester refused, and Simon raised the standard of revolt. The mediation of the King of the Romans secured a temporary peace on July 15th, and the aliens were banished, and Hugh le Despenser restored to the justiciarship. The Provisions were again proclaimed at St. Paul's on September 8th.

The aliens banished.

Enthusiasm for De Montfort.

The popular enthusiasm for Simon de Montfort was now very great; and a song was composed which celebrated his name—"The Strong Citadel"—above all other, because he loved the right and hated wrong.

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But while he was popular with the people, the barons were divided, and some of them deserted to the King.

Influence of the Friars.

All through their conflict with Henry, Simon and the barons received powerful, if sometimes indirect, assistance from the friars—especially those of the Franciscan order. The Dominicans, or Black Friars, who came to England in 1221, and the Franciscans, or Grey Friars, who followed in 1224, exercised considerable influence on the social and political development of England. Their power was especially felt in the constitutional struggles of Henry III.'s reign. They seized upon the events of the time for their homilies on right living, and greatly influenced popular opinion, thus securing the support of the masses to the cause of the barons against the King. Leicester's summoning of the representatives of towns to his famous Parliament was a recognition of the quickened political life which had been largely stirred into activity by the friars.

The French King's award.

At the close of the year 1263 Henry went to Amiens to attend the arbitration of the King of France; but Simon, in consequence of a severe accident, was obliged to send deputies. On January 23rd, 1264, Lewis gave his judgment, which was in favour of Henry on all points. This judgment, which is known as the Mise of Amiens, annulled the Provisions of Oxford and all engagements founded upon them ; in particular it left the King free to appoint his own ministers, council, and sheriffs, to employ aliens, and to enjoy his royal power as fully as he had done before the enactment of the provisions. By way of consoling the barons two provisoes were added, to the effect that the award was not intended to derogate from the liberties of the realm as they were established by royal charter, privilege, franchise, statute, or praiseworthy custom, and all feuds arising from recent proceedings were peremptorily suppressed. The charter of liberties was preserved, so that the King might take no revenge on the barons or the barons on the King.

The Barons dissatisfied.

The barons declaimed against the unjust nature of the award, which they affirmed to be all on the side

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of the King. Civil war consequently broke out, and Leicester entirely threw off his allegiance to his sovereign. After various encounters between the opposing forces, Simon de Montfort marched upon Lewes, where the royal army lay.

Battle of Lewes.

On May 14th was fought the great battle of Lewes. The royalists were defeated with terrible loss, and the King was taken prisoner. A treaty was concluded under the title of the "Mise of Lewes," by which it was agreed that another attempt should be made to settle the quarrel by peaceable means; and the King being nominally set at liberty, Prince Edward and his cousin Henry, Richard's son, were retained by the barons as hostages for their fathers. Rome was moved to issue a Bull against Leicester, but for thunder of that kind he cared little, and threatened to put the Legate to death if he appeared with it. When the Legate became Pope, not long afterwards, Leicester still courageously withstood him, strong in the support of the English people. Simon was hailed as a Gideon or a Moses, and was called "the corner-stone of English freedom."

Provisions of the Treaty of Lewes.

The "Mise of Lewes" has been entitled the first instrument in Earl Simon's government of England, and it is important to note its provisions. These articles were seven in number: the first and second reconfirmed the Provisions, and named a new body of arbitrators; the third article directed that the arbitrators should swear to choose only English counsellors; by the fourth the King was bound to act on the advice of his counsellors in administering justice and choosing ministers, to observe the charters, and to live at moderate expense; by the fifth Edward and his cousin Henry were given as hostages; the sixth provided for the indemnity of the Earls of Leicester and Gloucester; and the seventh fixed the ensuing Easter as the time for the completion of the compromise. The proclamation of peace was made at London on June 11th.

This treaty, as observed by Bishop Stubbs, furnished

A new constitution.

the basis of the new constitution which Simon intended to create, and it formed the link between it and the earlier one devised in 1258. Writs were issued appointing guardians of the peace in each shire, and ordering the election of four knights from each shire to meet the King in Parliament on June 22nd. When the Parliament assembled, it drew up a new scheme of government, which was to remain in vogue all through Henry's life, and for a portion of Edward's, to be thereafter determined. A standing council of nine, by whom the King was to act, was to be nominated by three electors chosen by the barons, and all the members of the council must be native Englishmen. The charters and provisions of 1263 were confirmed. Although the knights of the shire had no voice in the selection of electors or counsellors, they were summoned to Parliament, which shows that Leicester regarded them as part of the legislative body. "And in this," says the constitutional authority above quoted, "we trace a marked difference between his earlier and later policy. The provisions of 1258 restricted, the constitution of 1264 extended, the limits of Parliament; the committee of twelve that was to sit with the council of fifteen, the cumbersome and entangled duties of the several commissions, disappear; and some confidence is shown in the community of knights, which had been assembled by representation in 1254, which had come forward to urge reform in 1259, and whose importance had been recognised by both parties in the summons of 1261. But the provision for freedom of election showed more than a confidence in the knights; it extended that confidence to the freeholders by whom they were to be chosen—a confidence which was, in a few months, extended to the inhabitants of the boroughs. Either Simon's views of a constitution had rapidly developed, or the influences which had checked them in 1258 were removed. Anyhow he had had genius to interpret the mind of the nation, and to anticipate the line which was taken by later progress."

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Fresh difficulties.

The new electors or ministers chosen were the Earls of Leicester and Gloucester, and the Bishop of Chichester, Stephen Berksted, an amiable but not a very strong man. Hugh le Despenser remained Justiciar, and Thomas of Cantilupe—nephew of the Bishop of Worcester—was appointed Chancellor. De Montfort's government having got to work, one of its first efforts was for a reformation of the English Church. But while this matter was in progress, England was threatened from abroad. The Queen was in Flanders, raising mercenaries from various countries, and war was apparently impending. Vigorous measures were taken at home, and the expected invasion did not take place, the Queen's fleet being prevented from sailing by contrary winds. Domestic matters, however, were becoming critical. The Scots, under their king, John Baliol, were in rebellion; and the Welsh marches were being ravaged by banditti. It required all the prescience and energy of De Montfort to steer the ship of state in this time of peril.

The Great Parliament of 1265.

The King and Earl Simon were at Worcester in December, and it was on the 14th of that month that the writs were issued for the Great Parliament of 1265. To this important assembly has always been traced the origin of popular representation. But while its significance in the history of the constitution is admitted, the best authorities do not regard it as primarily and essentially a constitutional assembly. It was not a general convention of the tenants-in-chief, or of the three estates, but a parliamentary assembly of the supporters of the existing government. Those prelates opposed to De Montfort's views, as for example Archbishop Boniface, were not cited. But of the clergy there were summoned first the Archbishop of York, the Bishops of Durham and Carlisle, ten abbots and nine priors of the northern province, and ten bishops and four deans of the southern province; and by later writs fifty-five abbots, twenty-six priors, and the heads of the military orders were called—a representation which demonstrated that the clergy as a body were on the side of the Earl. The baronial con-

tingent was meagre; only five earls—Leicester, Gloucester, Norfolk, Oxford, and Derby—being summoned, and eighteen barons, ten of whom had acted with Simon in the arbitration of Amiens. But notwithstanding these defects the assembly bore a representative aspect of most enduring significance. The great feature of this first truly English parliament "was the representation of the shires, cities, and boroughs: each sheriff had a writ ordering him to return two discreet knights from each shire; a like summons addressed to the cities and boroughs ordered two representatives to be sent from each, and the barons of the Cinque Ports had a similar mandate. The writs to the cities and boroughs were not addressed to them through the sheriff of the county, as was the rule when their representatives became an integral part of the parliament; and so far the proceedings of Simon do not connect themselves directly with the machinery of the county courts; nor is there any order for the election of the representatives, but the custom of election was so well established that it could not have been neglected on this occasion."[1]

Its work.

When this famous Parliament met for the despatch of business, the most important question which came before it was the proposed release of Prince Edward. Leicester agreed to release the Prince on certain conditions, but he was resolved upon keeping both King Henry and his son under his own immediate surveillance and influence. Other questions were amicably arranged. The form of government enacted in the preceding year was re-established; all quarrels between the two parties were to be mutually condoned under penalty of outlawry; the Great Charter and the forest charter were to be sworn to by all persons concerned; and no aliens were to be introduced into the kingdom without special leave of the council.

But this legislation did not heal the feuds. The Earl of Gloucester could ill brook Simon's supremacy,

[1] Stubbs's *Constitutional History*.

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and causes of quarrel were soon discovered. Gloucester allied himself with the Mortimers, and De Montfort had the utmost difficulty in averting civil war by the exercise of his boundless energy. Though surrounded by hostile elements, the spirit of this brave man never faltered. While Leicester was at Hereford he came to an open rupture with Gloucester. The latter managed to communicate with Prince Edward, who was in Simon's custody. An ingenious plan of escape was arranged for the Prince, which was successfully carried into execution. Edward made his way to Roger Mortimer's Castle of Wigmore, and being a very popular prince, the people soon flocked to his standard in considerable numbers. De Montfort, whose cause was now in great danger, summoned his followers to march against Prince Edward, and denounced the Earl of Gloucester as a rebel. Young Simon de Montfort hastened from London with an army to the assistance of his father. Prince Edward fell suddenly upon young De Montfort at Kenilworth, and utterly defeated him. The Earl of Leicester, quite unconscious of his son's failure, broke up his camp at Hereford and crossed the Severn in boats, on August 2nd, a few miles below Worcester. He halted at Evesham, where he remained in daily expectation of the arrival of the force which had already been put to the rout. That force never came, but there speedily dawned instead the last day in the grand and eventful career of the great Earl of Leicester.

Rupture between Leicester and Glouces-ter.

Battle of Kenil-worth.

Simon and the King at Evesham.

Tragical and full of pathos is the description of the closing scene in the life of Simon de Montfort. On the morning of Tuesday, August 4th, King Henry and the Earl were just starting forth upon their march from Evesham, when a portion of the vanguard, which had already left the town, returned with the news that an armed force was approaching. It was the royalist army, commanded by Prince Edward, the Earl of Gloucester, and Roger Mortimer. When Leicester discovered that it was the Prince and not his son and ally that he was to meet, he exclaimed: "Now have I taught them to war

to some purpose! May the Lord have mercy on our souls, for our bodies are undone." Leicester's troops were outnumbered by three to one, and victory was impossible; but he rejected with scorn the idea of flight. The Bishop of Worcester having shriven the troops, Simon led them out against the enemy.

Battle of Evesham.

The battle was swift and decisive. The royalist forces were in good condition and excellent order; while Leicester's, in addition to paucity of numbers, were weakened by sickness, and dispirited by their bad position. Earl Simon fought like a lion, however, and his horse was killed under him. For a long time he bore himself like a tower; but at length a foot soldier, lifting up his coat-of-mail, pierced him in the back, and he fell, uttering the words "*Dieu merci*." The sanguinary encounter still proceeded, till it became mere butchery. The King himself nearly lost his life. The victors disgraced themselves by their savage treatment of the body of their illustrious foe. The remains of Simon, with those of his son Henry and Hugh le Despenser, were afterwards buried in the Abbey by command of Prince Edward.

Death of De Montfort.

His character.

So died the great Simon de Montfort; but his influence was stamped upon the Constitution. The people mourned him as the mightiest leader who had yet arisen to plead their cause; and the fatal field of Evesham could not blot out his name and influence. He was a great general and a great politician; but he did not fight for his own hand, and on one occasion he thus expressed the cardinal principle of his life—"I would rather die without a foot of land than break the oath I have made." Brave, noble, chivalrous, he was also daringly ambitious, as a man of such mould must be; but where others would have grasped at the supreme power, he remained a true servant of the State, anxious first and foremost for the good of the people. In private he was one of the noblest of characters, and by his virtues he set an example to the licentious and tyrannical spirits of his own age. If he seemed to fail at the last, his defeat was only personal;

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The work of Simon de Montfort.

Influence and labours.

for as the embodiment of the spirit of English freedom he still lives, and his name is justly immortal in our history.

The work of Simon de Montfort may be summed up in a single sentence. It was this powerful leader and statesman who "first struck the key-note of constitutional government." And the principles of equity which he sought to carry out in legislation he also endeavoured to import into the government of the Church. If his Parliaments were incomplete, he yet set at work those principles of reform which ultimately placed the system of popular representation upon a wider and more durable basis. He stood forth in the midst of an age cursed by the cruelties and oppression of feudalism, the seer and harbinger of a new era. He found England the slave of kings and nobles, and left her with noble aspirations after freedom. The seeds of reform which he scattered upon English soil were overlain for a time, but they were not dead. Nurtured by the sufferings of patriots in succeeding generations, they quickened into vitality, and sprang forth at last in beauty and fulness. In every record of constitutional government in this country Simon de Montfort must henceforth take that high and honourable place to which he is entitled, alike by his distinguished personal qualities, his inflexible purpose, his lofty integrity, and his brilliant services in the battle-field and the senate.

The Dictum of Kenilworth.

The death of Henry's most powerful subject was followed by a complete recovery of the royal authority, which the King was not long in asserting. The families of the rebel lords who had fought on the side of Earl Simon at Kenilworth and Evesham were disinherited, and other stringent measures followed. The remnant of the baronial party, however, shut themselves up in Kenilworth Castle, and only capitulated after a protracted siege. In October 1266 a treaty was drawn up between Henry and the recalcitrant barons, called the Dictum of Kenilworth. By its main provisions the plenary power of the King was declared; De Montfort was forbidden to

be regarded as a saint, and his acts were annulled, although the charters and the liberties of the Church were secured; all persons, with the exception of the De Montforts and a few others, were permitted to compound for their offences by a fine; and pardon was promised to all who should submit to the ordinance within forty days.

Parliament of Northampton.

On October 26th a Parliament met at Northampton, when the award of twelve bishops and barons to provide for the welfare of the realm was read and confirmed. According to its provisions the disinherited nobles and others were to be restored to their lands on the payment of five years' rents, or lesser sums, according to the nature of the offence. It was also decreed by the same authority that all obligations, writings, or instruments, made by the King, his son, or by any of the King's faithful subjects, in reference to the Oxford Provisions, were null and void.

Statute of Marlborough.

The most important Parliament of the closing years of Henry III. was that held at Marlborough, November 18th, 1267. It was called for the purpose of restoring order and good government. It re-enacted as a statute of the realm the provisions of 1259 with very few alterations, the most important being that the appointment of the royal ministers and the sheriffs was now left in the hands of the King.

Parliaments of 1269-71.

A Parliament was held at Westminster, October 13th, 1269, the occasion being the translation of the body of Edward the Confessor to the magnificent tomb prepared for it in the Abbey, and the celebration of the opening of the church, which had been completely rebuilt. London now recovered its forfeited charters, and the lands of all the disinherited were restored by a Parliament held on January 13th, 1271.

Death of Henry.

Although Henry continued to reign, the real power had been for some years in the hands of his soldier son. At last, on November 16th, 1272, the long rule of this Angevin king came to an end. Henry as a man was accomplished, liberal, pious, and given to magnificence; but he was a weak, vacillating, and incompetent

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sovereign. Still, we are able to trace during his government some growth in the constitution, and the concentration of the ancient local councils into a national representative assembly. Statute law also dates from Henry's reign, and trial by ordeal was abolished in 1218, trial by jury being offered as a substitute for it in all cases, criminal as well as civil. The first statute in the printed collection is the Great Charter of Henry III., as confirmed and entered on the Statute roll of 25 Edward I.

Statute Law.

Constitutional rights achieved.

With regard to the constitutional privileges either granted or confirmed by Henry III., the two main rights of the individual, justice and the inviolability of the person, originally wrung from John, were, if possible, even more clearly affirmed by Henry. There was also foreshadowed in his reign the great principle of parliamentary taxation, which afterwards assumed a definite and statutable form. "From this era a new soul was infused into the people of England. Her liberties, at the best long in abeyance, became a tangible possession, and those definite aspirations for the laws of Edward the Confessor were changed into a steady regard for the Great Charter. Pass but from the history of Roger de Hoveden to that of Matthew Paris, from the second Henry to the third, and judge whether the victorious struggle had not excited an energy of public spirit to which the nation was before a stranger. The strong man, in the sublime language of Milton, was aroused from sleep, and shook his invincible locks. Tyranny indeed, and injustice, will, by all historians not absolutely servile, be noted with moral reprobation; but never shall we find in the English writers of the twelfth century that assertion of positive and national rights which distinguishes those of the next age, and particularly the monk of St. Alban's." [1]

It is noteworthy that, although the prohibition of levying aids without consent of Parliament was omitted

[1] Hallam's *Europe in the Middle Ages*, chap. viii.

from Henry's charters, the barons frequently refused the aids, and the King himself never claimed the right of general taxation. This fact alone testifies to the growth of the constitutional principle. When Henry III. was most successful against his foes, he did not attempt to overthrow the provisions of the Great Charter, and his own prerogatives were limited by law. Bracton, one of Henry III.'s judges, observes that "the king can do nothing on earth, being a minister of God, but what he can do by law"; and law is not any mere will of the prince, "but that which is established by the advice of the counsellors, the king giving his authority, and deliberation being had upon it." To Henry's time is to be traced the legal equality of all ranks below the peerage. All the commoners of England had equal rights and privileges, and a great advance has been made in the life of any nation when the equality of civil rights has been established by custom and guarded by the law.

The King and the people.

Equality of civil rights.

Before the conclusion of Henry's reign the legal system of England was perfected and completed, and the whole body of the common law placed upon a wider and more durable basis. There was a steady onward movement towards the acquisition of popular rights and privileges, though the time had not yet arrived for the people fully to assert themselves. A period of legislative change is now reached, and the survey of the early Councils and Parliaments of the kingdom closes. This survey will, I trust, sufficiently indicate the nature of those assemblies which preceded the summoning of the first comprehensive and national Parliament.

A new departure.

CHAPTER IV.

EDWARD I., THE GREAT LEGISLATOR.

Character of Edward's Government.

It was in the reign of the valiant and sagacious Edward I. that our Parliamentary institutions and the civil law began to advance by rapid strides. This great king has been called the English Justinian, and two of the earliest authorities upon the Constitution—Hale and Blackstone—combine in the affirmation that "the very scheme and model of the administration of common justice between man and man was entirely settled by this sovereign." With Edward's genius as a military leader, and his prowess in Scotland and elsewhere, this work has no immediate concern; it is as a civil governor, in which capacity he likewise stands forth in bold pre-eminence, that I must chiefly regard him. He was not afraid of his people, nor of the spread of enlightenment in the land. He endeavoured to be just to all his subjects, and extended to Ireland and Wales the benefits of the English law. But two important popular concessions especially distinguish the period of Edward I. The representation of the Commons of England first assumed under him a definite and regular shape; while there was further secured the formal and momentous declaration that the right or privilege of levying taxes was vested in the Parliament. It is one of those insoluble mysteries of human nature how so upright and liberal a sovereign

could have treated the Jews with such cruel rigour. Edward indulged also the well-known Plantagenet ideas touching the royal prerogative ; yet nobly corrected this weakness by governing England in accordance with the most advanced ideas of the age.[1]

The throne of England vacant.

Edward was the first king who actually reigned before his coronation, and it is also a curious fact that for four days before he was formally accepted as sovereign the throne of England was legally vacant. Edward was in Palestine when his father died, which event occurred on November 16th, 1272. Four days later Henry was buried in Westminster Abbey ; but it was not until the day of his interment that the Earl of Gloucester, with the prelates and barons, swore allegiance to Edward as king. Presuming that the idea of election and consent were necessary to a king's legal accession, then Edward's reign could only date from the day the oath of fealty was taken. There was thus an interregnum of four days, and this view is borne out by various authorities, including Sir T. Duffus Hardy, in his Introduction to *Close Rolls* ; Nicolas, in his *Chronology of History* ; and Allen, in his work on the *Royal Prerogative*. It was not until the reign of Edward IV. that the new theory was accepted that the king never dies.

Edward's accession.

The royal council issued a proclamation on November 23rd, announcing that the kingdom had, by hereditary succession and the will of fealty of the "proceres,"

[1] The Statute Rolls, setting forth Resolutions of Parliament, and extending from 6 Edward I. to 8 Edward IV., are the most important official documents bearing on the reign of Edward I., and the reigns of the next century and a half. Then there are the Parliamentary Rolls, Reports of the Chancery Officials concerning Proceedings in Parliament, now printed as *Rotuli Parliamentorum*, and extending from 6 Edward I. to 26 Henry VIII. The original works of authority for the ensuing chapter include William Rishanger's *Chronicle*, Nicholas Trivet's *Annals*, the *Waverley Annals*, and Walter of Hemingburgh's *Chronicle*. The principal modern writers are Edward Foss (*The Judges of England*), Hallam, Freeman, Pauli, and Stubbs.

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devolved upon Edward, and enjoining the observance of the public peace. During the King's absence the council efficiently administered the government. The oath of fealty to Edward was renewed in a great assembly held at Westminster after the feast of St. Hilary, 1253.

His coronation.

Edward returned to England early in August 1274, and on the 19th of that month was crowned by Robert Kilwardby, a Dominican friar, who had been appointed Archbishop of Canterbury on the nomination of the Pope. Robert Burnell, an able lawyer, was appointed Chancellor. Kilwardby was a man of learning, with a strong bias towards reforms in Church and State; and Burnell was well qualified to assist Edward in formulating that series of legal reforms which has shed such lustre upon his name.

Edward the real founder of the Constitution.

Edward's legislative policy was an amplification of that of Henry II., with this important addition—that the later monarch sought to gather under his own control the entire forces and interests of the realm, and to give to all classes alike a direct share in the national weal. All his legal reforms, likewise, were conceived in the same spirit. As the constant representation of the Commons is to be referred to the age of Edward I., it will be nearer the truth, as Hallam has remarked, to date the English Constitution from this, rather than from any earlier, era.

First Statute of Westminster.

In April 1275 Edward's first Parliament met, and passed the First Statute of Westminster—a great legislative achievement. "This Act is almost a code by itself; it contains fifty-one clauses, and covers the whole ground of legislation. Its language now recalls that of Canute or Alfred, now anticipates that of our own day: on the one hand, common right is to be done to all, as well poor as rich, without respect of persons; on the other, elections are to be free, and no man is by force, malice, or menace to disturb them. The spirit of the Great Charter is not less discernible: excessive amercements, abuses of wardship, irregular demands for feudal aids, are forbidden in the same words or by amending enactments. The inquest system of

Henry II., the law of wreck, and the institution of coroners, measures of Richard and his ministers, come under review, as well as the Provisions of Oxford and the Statute of Marlborough."[1] But these privileges and reforms were not conceded without some equivalent. There was made to the king a grant of custom on wool, woolfells, and leather. This was the first legal origin of the customs.

Parliaments of 1275-76.

At a parliament held in October 1275, a fifteenth of temporal movables was bestowed for the relief of the royal necessities. In the Easter Parliament of the following year measures were taken for enforcing and regulating the collection of this tax; while recognition of the validity of the Charters was made, and a genera pardon extended to all the disinherited of the late reign. The October Parliament of 1276 passed two minor Acts —the Statute of Bigamy, supplementary to that of Winchester, and the Statute of Rageman, which ordered a visitation by the justices to determine all suits for trespass committed within the last twenty-five years.

Church Councils.

In the *Select Charters* five documents are printed showing the growth of the representative system in the construction of Church councils during the thirteenth century. These documents are writs of summons from the Archbishops, extending from 1225 to 1277. None of them precisely correspond with the summons to Convocation in its modern sense. As clerical taxation was introduced into the Church synods, diocesan representatives were sent to the provincial Convocations for the purpose of giving their assent to taxation. The first definite instance of representation in Convocation may be regarded as that under Archbishop Langton in 1225. The Convocation of the Province of York dated from 1279, but that of the Province of Canterbury was not fully constituted until 1283.

Convocation.

The Rolls of Parliament begin with the year 1278, but for some years they are mere entries of the petitions

[1] Stubbs's *Constitutional History.*

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presented to the King in Parliament; and though the word Parliament is of frequent occurrence, the first mention of the Commons is in 1304. This, however, is only nine years later than the actual constitution of Parliament as it now practically exists. In the year 1304 there is a proclamation of the King recorded, in which he thanks not only the archbishops, bishops, earls, barons, etc.; but also *les chevalers des countez, citizyns, et burgys et autre gens qui sont venus à cest Parlement.* On this, the very first official mention of the Commons, the royal proclamation goes on to direct that the knights, citizens, and burgesses shall receive *brefs d'avoir lour despenses en lour pais*, and this is a regular entry in one form or other at the end of every session.

Rolls of Parliament.

The Statute of Glouces-ter.

Returning to the work of Edward's Parliamentary Councils, in 1278 the Statute of Gloucester was passed. It sought to improve the process of provincial judicature by regulating the territorial franchises. Itinerant justices were empowered to ascertain by what warrant territorial franchises were held, and a writ of *quo warranto* was issued in each case.

Com-pulsory knight-hood.

The king was compelled to resort to extraordinary measures for raising money; and in 1278 he issued a writ compelling all freeholders possessed of landed estate yielding £20 a year to receive knighthood, or to give such security as was equivalent to a licence for evasion. Edward had a second object in view besides the pecuniary one—namely, to increase the knightly body, and thus diminish the influence of the mesne tenures The lords viewed this with alarm, and their disquietude soon extended to the clergy.

Arch-bishop Peckham.

Archbishop Kilwardby having been made a cardinal in 1278, the Pope nominated in his place John Peckham, an English Franciscan, and a pupil of Adam de Marisco. This new primate called a council at Reading in August 1279, and made a bold stand for political independence He ordered the clergy of his province to recount to their parishioners the sentences of excommunication issued against the impugners of *Magna Carta*, and against

those who obtained royal writs to obstruct ecclesiastical suits, and against all (including the king's officers) who neglected to carry out the sentences of the ecclesiastical courts. In the ensuing Michaelmas Parliament, however, Edward compelled the archbishop to cancel the objectionable articles, and to order the copies of the charter which had been affixed to the church doors to be taken down.

Statute of Mortmain.

Then the King proceeded to a more sweeping and important measure. Seeing with indignation how much of the land was steadily freeing itself from the obligation of military service, by passing into the hands of the clergy, and securing itself against ever lapsing into the royal hands, he remedied the abuse by issuing the famous Statute of Mortmain, or *De Religiosis*. This enactment, passed November 15th, 1279, forbade any person whatsoever, religious or other, to buy or sell, or under colour of any gift, term, or other title, to receive from any one any lands or tenements in such a way that such lands and tenements should come into *mort main*. The penalty was forfeiture to the next superior lord, and failing his action or that of his over-lord, the forfeiture passed on to the King. "Although this statute may have been timed by a wish to repress ecclesiastical assumptions, it was unquestionably called for by the prevalence of an abuse which had existed from the first days of the Church Establishment in England: the fraudulent bestowal of estates on religious foundations, on the understanding that the donor should hold them as fiefs of the Church, and be thus exonerated from public burdens. The Statute of Mortmain bears a close relation to the statute *Quia Emptores*, enacted six years later, in which the feudal dues of the superior lords—the king the chief of them—are secured by the abolition of subinfeudation; as in this act they are secured by the limitation of ecclesiastical endowments. In both these points Edward's policy was a carrying out of the principles of his great-grandfather, Henry II."[1]

[1] *Select Charters.*

Taxation of the clergy.

The spiritualities of the clergy were next taxed; and after much deliberation the Convocation of York granted a tenth for two years and that of Canterbury a fifteenth for three.

Provincial assemblies at York and Northampton.

The Welsh war compelled Edward to raise money in 1282, and his financial and Parliamentary expedients at this time are of considerable interest. Instead of appealing to the nation in full assembly, he negotiated separately with individuals and communities. John Kirkby, afterwards Treasurer of the Exchequer and Bishop of Ely, was commissioned to arrange a subsidy with the counties and boroughs. He was successful; but it was found that the sums raised were not sufficient to satisfy the royal necessities. A general impost must be asked for. Writs were issued on November 24th, 1282, to the sheriffs and the two archbishops, directing them to collect in two provincial assemblies, at Northampton and York, the representatives of the two estates. On January 20th following, the assemblies duly met at the appointed places in two bodies—lay and clerical. At Northampton, and also at York, the Commons granted a thirtieth, but the clergy contented themselves with promises. Edward was not so pressed now, as Llewelyn had been killed in battle in December 1282, and the English monarch had also obtained a supply of money by seizing the treasure accumulated at the Temple for the crusade. After a long delay, a twentieth was given at a Convocation in November.

Trial of David of Wales.

David, the brother of Llewelyn, was captured after an abortive rising in June 1283. This prince was the sworn liegeman of Edward, from whom he had received knighthood; but he conspired against him. Edward now called together another anomalous assembly for the purpose of trying him. Writs were issued, under which the sheriff of each county was to return two elected knights; while the governing bodies of twenty cities and boroughs were to return two representatives for each. There were likewise summoned by special writ eleven earls, ninety-nine barons, and nineteen other men of note

—judges, councillors, and constables of castles. The assembly met at Shrewsbury on September 30th, 1283, when David was tried, condemned, and executed. His judges were chosen from the justices of the Curia Regis; the barons watched the trial as his peers, and the presence of the Commons gave moral weight to the proceedings.

Statute of Acton Burnell.

At this time the King issued "an ordinance or establishment, called the Statute of Merchants, or the Statute of Acton Burnell, an enactment which, although it was put forth by the King and council, in an assembly which was not properly a national Parliament, was accepted as a law, and has won the name of Parliament for the body which accepted it." But the act "was not one of the precedents which were followed when the National Council took its final form." The Statute of Merchants, or the Statute of Acton Burnell, was an important commercial measure. It provided for the registration of merchants' debts, their recovery by distraint, and the imprisonment of debtors.

The Statute of Wales.

Having subdued the Welsh, Edward formally annexed the Principality by the Statute of Wales, which was issued from Rhuddlan at mid-Lent, 1284. The Statute of Wales was intended to assimilate the administration of Wales to that of England, and it introduced the English law. Edward created his son Prince of Wales, a title which has since usually been borne by the heir-apparent, though not by birth, but by separate creation in each case.

Second Statute of Westminster.

The Second Statute of Westminster, passed in the Midsummer Parliament of 1285, was a very important enactment. Its first and most famous article, *De Donis Conditionalibus*, "forms one of the fundamental institutes of the mediæval land law of England; the law of dower, of advowson, of appeal, for felonies, is largely amended; the institution of justices of assize is remodelled, and the abuses of manorial jurisdiction repressed; the statute *De Religiosis*, the Statutes of Merton and Gloucester, are amended and re-enacted. Every clause has a bearing

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on the growth of the later law."[1] A code in itself, like the First Westminster Statute, this Second Statute demands high praise for its comprehensive and reforming character.

The Statute of Winchester.

The Statute of Winchester, also passed in 1285, is very different in spirit from that of Westminster. The former instrument "carries us back to the earliest institutions of the race; it revives and refines the action of the hundred, hue and cry; watch and ward, the fyrd, and the assize of arms." If the Statute of Westminster represents the growth and defined stature of the royal jurisdiction, the Statute of Winchester shows the permanence and adaptability of the ancient popular law. Together they form the culminating point of Edward's legislative activity; though there were yet many excellent acts to succeed them. A settlement of the procedure of the ecclesiastical courts was also effected by the King.

Aids resisted.

Edward went to Gascony in May 1286, and remained there until August 1289, leaving his cousin, Edmund of Cornwall, regent of the kingdom. In 1288, under a new vow of crusade, the King obtained an ecclesiastical tenth; but in the Candlemas Parliament of 1289 his treasurer, Kirkby, received a rebuff. Edward wanted a general aid, but the Earl of Gloucester resisted it. There were strong complaints against the judges, and after a commission of inquiry under the Chancellor Burnell had reported, the two Chief Justices, Hengham and Weyland, and other officials, were removed, and Parliament sanctioned their dismissal.

Grant of 1290.

Edward's daughter Johanna was married to the Earl of Gloucester in April 1290; and on May 29th, "in full Parliament," a grant of aid *pur fille marier* was made at forty shillings on the fee. This Parliament, however, though called a full one, contained only the bishops and barons. As yet there was no desire to consult representatives of the Commons in matters of legislation. Parliament proceeded with its work,

[1] Stubbs's *Constitutional History*.

and on July 8th the King enacted at the instance of the magnates the Statute of Westminster the Third, *Quia Emptores*. While this Statute gave the lords power over their tenants, it gave the King far greater influence over the lords. "It directed that in all future transfers of land, the purchaser, instead of becoming the feudal dependent of the alienor, should enter into the same relations in which the alienor had stood to the next lord. In this way the king and the chief lords would not lose the services and profits of feudal incidents—a danger with which the constant repetition of the process of subinfeudation threatened them. But the operation of the statute had far wider consequences. As a part of Edward's policy it bears, as has been already noted, a close analogy to the statute *De Religiosis*, which is partly rehearsed in it."[1]

Quia Emptores.

A Parliament met on July 15th at Westminster, to which had been summoned two or three elected knights from each shire. Edward obtained from this Parliament a fifteenth of lay property; while a tenth of the spiritual revenue, which he also claimed, was granted by the clergy at Ely on October 2nd ensuing.

Lay and clerical grants.

But these grants again were not made without an equivalent. The nation had long been calling for the expulsion of the Jews; and now, by an act done by himself in his private council, the King banished them from England. It was a harsh measure against an industrious and enlightened people. Legislation had for some time pressed heavily against them. Their expulsion was partly due to the popular wrath and partly to Edward's financial necessities.

Expulsion of the Jews.

Owing to the death of the young Queen of Scots on October 2nd, 1290, Edward was called upon, as overlord of Scotland, to settle the succession to the throne of that kingdom. The claimants nearest in blood were Robert Bruce and John Baliol, and he decided in favour of the latter.

The Scottish throne.

[1] Stubbs's *Constitutional History*.

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Parliament of 1292.

A Parliament held at London in January 1292 settled the great suit between the Earls of Gloucester and Hereford. The rivalry of the two earls ended in the mulcting and temporary imprisonment of both. In the following month of February Parliament decided that all freeholders possessing the requisite income in land must receive knighthood, and in the succeeding January the estates of the defaulters were seized by the King's commands.

Quarrel with France.

Foreign troubles now arose. A quarrel between the Cinque Ports and the Normans led to a war between the Gascons and the French, while Edward was summoned to Paris by Philip the Fair to answer for the misconduct of his servants. As he was contumacious, in February 1294 his fiefs were declared forfeited to the French crown—an act which at once led Edward to prepare for war. At a Great Court or Parliament held at Westminster June 6th, 1294, he was warmly supported in his resolve, and money was lavishly promised.

Conflict with the clergy.

Meanwhile, Edward got into serious conflict with the clergy. There was no primate at this juncture, Peckham having died in 1292. The King called an assembly of the clergy, in which the parochial and cathedral clergy were represented, to meet at Westminster on September 21st, 1294. The delegates made an offer of two tenths for one year, but Edward told them they must pay half their spiritual revenue or be outlawed. In the end, after some small concessions had been granted, the clergy yielded to the exorbitant demand.

Parliament of 1294.

Edward next called an important Parliament, in order to ask for further supplies. The Parliament met at Westminster on November 12th, 1294, and the laity granted a tenth of all movables, allowance being made for the goods of the clergy, the latter having already promised a half. A sixth was at the same time collected by separate negotiation on the part of the King's officers from the cities and boroughs. Although Edward was acting unconstitutionally at this period, it is satisfactory to note that the right of the clergy and the counties to be

represented in their proper assemblies, and to give their assent to taxation, was fully recognised.

Council at Westminster.

The third Welsh war having concluded in 1295, the King called a great council at Westminster for August 1st. The assembly met and despatched the judicial business, discussed the question of a peace, and commissioned the Papal legates to conclude a truce with France. The question of supplies was left in abeyance.

The great Parliament of 1295.

To settle this matter Edward issued summonses for the first full and model Parliament in English history. It was appointed to meet on November 13th, 1295, at Westminster; and the persons summoned consisted of eight earls, forty-one barons, the two archbishops and the bishops, sixty-seven abbots, the Masters of the Temple and of Sempringham, the prior of the Hospital of St. John of Jerusalem, the prior (dean) and archdeacons of the dioceses of Canterbury and York, one proctor from the chapter of each cathedral, two proctors from the parochial clergy of each diocese, two knights from each county, and two citizens or burgesses from each city or borough in every shire. In this assembly historians have discerned all the component parts and type of a finished Parliament, for every section of the population that had political rights was represented in it, either in person or by proxy. "It was from me that he learnt it," Earl Simon had cried, as he recognised the military skill of Edward's onset at Evesham; "it was from me that he learnt it," his spirit might have exclaimed as he saw the King gathering at last two burgesses from every city, borough, and leading town within his realm, to sit side by side with the knights, nobles, and barons of the great council. The fabric of the representative constitution was at last completed, and the great council of the past became the Parliament of the future. Each of the three estates now began to take part in the grant of supplies, the work of legislation, and, finally, the control of government.[1]

[1] Green's *History*.

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How summoned.

The forms of the various summonses to this Parliament demand consideration. The first writ issued was, according to ancient precedent, addressed September 30th, to the Archbishop of Canterbury. The primate was Robert Winchelsey, an eminent scholar, formerly rector of the University of Paris, and Chancellor of Oxford University. He was directed to attend on the Sunday after Martinmas at Westminster, and was premonished to cause the prior of his cathedral and the archdeacons of the diocese to present themselves in person, and the chapter of the cathedral by one, the parochial clergy by two, sufficient proctors. The representation of the clergy was now assimilated to that of the Parliament. The Archbishop of York received a similar summons, to assemble his clergy not at York but at Westminster; and the several bishops received their writs direct from the Crown, as in the former summons to Parliament, and not through the archbishop, as in the case of the provincial convocations. The abbots and priors were summoned on the same day as the prelates; but the writs to the baronage were only issued October 1st, and those to the sheriffs—for the county and borough representation—not until the 3rd. The share of each estate in the approaching deliberations was marked out in the summons: the clergy and the baronage were to treat, ordain, and execute measures of defence, and the representatives of the commons were to bring full power from their constituencies to execute, *ad faciendum*, what should be decided upon by the general body. "The machinery of the county court, which had already been used for the choice of persons who should assess the taxation levied by the crown, is now used for the choice of persons to represent the shire, and for the confirmation of the choice of their representatives by the towns. And these representatives, the choice of whom is notified from the sheriff in the county court to the crown, meet in parliament 'to enact such things as shall of our common council be ordained.' The crown in parliament begins to be distinguishable from the crown in council; but it took a long time to establish a clear

demarcation of the functions of legislature and executive, a still longer time to enable the two, when once their functions were distinguished, to work harmoniously together."[1]

Its representative character.

This model Parliament of Edward I. unquestionably forms an epoch in our constitutional history. Although the materials were ready to the King's hand, he must have the credit of the regular and practical constitution of the English Parliament as it has since existed in its salient features. He accepted promptly the limitation of his own powers, requested the advice of Parliament on his most important administrative measures, submitted to it his legislative enactments, and yielded to it—though not without reluctance—his power of arbitrary taxation. "Great as were his achievements in peace and war, the Parliament of England was the noblest monument ever reared by mortal man. Many things have changed, but in all main points the Parliament of England, as it exists at this day, is the same as that which gathered round the great Plantagenet. It is especially the same in that which forms its chief glory, that it is the representative, not of one class, or of any portion of society alone, but of every class and every portion, which at any given time is capable of representation."[2]

Aids granted.

The Parliament met on November 27th, 1295, when the aid demanded by the King was discussed by the three bodies separately. The barons and knights gave one-eleventh of their movables; the burgesses one-seventh; and the clergy, after much altercation with Edward, one-tenth. This is probably the first instance in which the three several estates taxed themselves in different proportions.

The clergy in Parliament.

It is convenient to notice here the disinclination of the clergy to sit in Parliament, and their subsequent withdrawal from it. While it was Edward's intention to make them an effective branch of a comprehensive

[1] Sir W. R. Anson's *Law and Custom of the Constitution.*

[2] *History of England*, by S. R. Gardiner, LL.D.

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national Parliament, the clergy themselves were averse from interfering in secular legislation. They despised as barbarous the system of common law, and desired to keep themselves apart from the people as a privileged class. They therefore unwillingly obeyed a summons which had generally only their taxation in view. Moreover, they had their own Convocation, which had been recently remodelled. In the fourteenth century the clergy ceased to attend the English Parliament altogether, though in Scotland they attended as late as the seventeenth century. But whether in Convocation or in Parliament, "they certainly formed a legislative council in ecclesiastical matters, by the advice and consent of which alone, without that of the Commons (whatever might be the case as to the Lords), Edward III. and even Richard II. enacted laws to bind the laity."[1] The celebrated statute, *De Hæretico Comburendo*, passed in Henry IV.'s time, was enacted on the petition of the clergy alone, and is expressed as being made by the consent of the Lords, but without mention of the Commons. For two hundred years after they had ceased to attend parliament the clergy retained the strictly parliamentary function of taxing themselves in Convocation.[2] But Henry VIII. forbade Convocation to enact constitutions or canons without the king's licence; and from the reign of this monarch—when the Church was subordinated to the State—the subsidies granted in Convocation were always confirmed by act of Parliament. Finally, in 1664 the practice of ecclesiastical taxation was discontinued without the enactment of any special law,[3] and the clergy were taxed uniformly with the laity. Since that time the clergy have enjoyed the right of voting, in respect of their ecclesiastical freeholds, in the

and in Convocation.

[1] Hallam's *Middle Ages.*

[2] Taswell-Langmead's *English Constitutional History.*

[3] It was settled by a mere verbal agreement between Archbishop Sheldon and the Lord Chancellor Clarendon, and the change has been described as "the greatest alteration in the Constitution ever made without an express law."

election of members of the House of Commons. Consequently the clergy are not now, as formerly, a separate estate of the realm. Though the parliamentary form of the estates of the realm is still that of the Lords Spiritual, the Lords Temporal, and the Commons, there are practically only two estates, Lords and Commons—the clergy being represented in the Lords by the bishops, and in the Commons by representatives elected alike by clergy and laity.

Constitutional crisis.

In 1296-7 Edward was faced by a constitutional crisis of the first magnitude. As a consequence of his frequent exactions from the clergy, Boniface VIII. issued on February 24th, 1296, his famous bull *Clericis laicos*, which absolutely forbade under pain of excommunication the payment to laymen of any tax whatever on the revenues of the Church. Archbishop Winchelsey and the clergy sheltered themselves under this bull; but the practical outlawry of the whole clerical body in January 1297, followed by the temporary confiscation of the estates of the see of Canterbury, compelled the clergy to abandon their untenable position and to yield to the monarch's demands.

General discontent.

But the merchants now waxed angry because the King heavily taxed and seized their wool; the barons were irritated because of Edward's infractions of *Magna Carta*, and his refusal to confirm the Great Charter and the Charter of the Forest; while the people at large chafed under the requisitions for the King's expedition to Flanders. At this juncture Edward summoned a Parliament, which met at Salisbury on February 24th, 1297. It was really only an assembly of the baronage. The King proposed that the barons should go to Gascony, while he proceeded to Flanders. Roger Bigod, Earl of Norfolk and Marshal of England, and Humphrey Bohun, Earl of Hereford and Essex, the Constable, stoutly refused. In reply to alternate threats and prayers on the part of Edward, Bigod answered: "With you, O King, I will gladly go: as belongs to me by hereditary right, I will go in the front of the host before your face." "But without me," the King urged, "you will go with the rest." "Without

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you, O King," was the reply, "I am not bound to go, and go I will not." Edward then exclaimed, "By God, Earl, you shall either go or hang!" "By the same oath, O King," retorted Roger, "I will neither go nor hang;" and the council broke up in disorder. The Marshal and Constable, who were supported by a large number of the magnates and a force of 1500 cavalry, forcibly prevented the King's officials from seizing the wool, hides, and other commodities on their estates, and prepared for armed resistance.[1]

Edward is withstood by Bohun and Bigod.

The quarrel deepened, and on May 15th Edward issued writs for a general military levy of all the landowners of the kingdom, whose lands were of £20 annual value and upwards, and they were directed to meet him in London on July 7th. On the day named the force met; but the Constable and Marshal refused to perform their duties, and were superseded at their own request. The summons of the whole force of the kingdom for an aggressive foreign war was unconstitutional and a violent straining of the military obligations; but instead of pleading this Bohun and Bigod based their refusal on the technical illegality of the summons, which was worded as a mere informal invitation. The earls and barons had previously concerted their measures in a parliament of their own, held in the forest of Wyre, in the Welsh march. Although Bohun and Bigod probably acted from mixed motives, they yet deserve lasting remembrance as the forerunners of Hampden and Pym in resisting the King's tyranny; and it is unquestionably to their efforts, aided by the patriotic exertions of Archbishop Winchelsey, that we owe the addition of "another pillar to our constitution not less important than the Great Charter itself." Bishop

[1] *Chronicle* of Walter de Hemingburgh, sub prior of Guisborough, in Yorkshire. The *Chronicle* began with the Conquest, and originally extended to the year 1297; but additions were afterwards made, bringing this valuable record down to 1346. In 1848 Hemingburgh's *Chronicle* was edited by Mr. Hamilton for the Early English Text Society.

Stubbs does not take so high a view of their action in forcing a confirmation and extension of the Charter as some other historians. He inclines to the view that they were actuated quite as much by personal claims as by motives of true patriotism. But Hallam, from whom I have already just quoted, says: "I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, Earl of Hereford and Essex, and Roger Bigod, Earl of Norfolk. In the Great Charter, the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour, and success, required a far more intrepid patriotism."[1]

Speech of the King.

Impressed by the seriousness of the crisis, Edward made peace with the Archbishop, restoring the confiscated lands of his see, and then he appealed to the people. On July 14th the King appeared in front of the great hall at Westminster, accompanied by his son Edward, the Archbishop, and the Earl of Warwick. Standing upon a wooden stage erected for the occasion, he harangued the people. With visible emotion he craved forgiveness for his past acts, admitting that he had not governed as well and peaceably as became a king. "Behold," he added, "I am going to expose myself to danger for your sakes; I pray you, if I return, receive me as you have me now, and I will restore to you all that has been taken. But if I return not, crown my son as your king."[2] The people, moved by this touching address, promised fealty with uplifted hands.

Grants exacted.

Still, money was imperatively required. The King exacted from an irregular assembly an illegal grant of an eighth from the barons and knights and a fifth

[1] *Middle Ages: The English Constitution.*
[2] Matthew of Westminster.

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from the towns. Failing to negotiate with Bohun and Bigod, on July 30th Edward gave orders for the collection of the eighth and fifth, and directed the seizure of all the wool of the kingdom, promising to pay for it as soon as he was able. The clergy pleaded the Papal bull as the reason they could not contribute, whereupon the King directed the seizure of a third of their temporal goods.

Bill of grievances.

The King then prepared to embark; but while he was at Winchelsea, an important bill of grievances, prepared by the magnates, was presented to him. "These are the grievances," it began, "which the archbishops, bishops, abbots, priors, earls, barons, and the whole community of the land, show to our lord the King, and humbly pray him to correct and amend, to his own honour and the saving of his people." The first grievance related to the insufficiency of the summons for July 7th. If the King wished to go to Flanders, the remonstrants were of opinion that they were not bound to serve in that country, there being no precedent for such service; but, supposing that they were so bound, they had been so much oppressed with tallages, aids, and prises, that they had no means of equipment. Secondly, the same oppressions had left them too poor to grant an aid; thirdly, the Great Charter had not been kept; fourthly, the Assize and Charter of the Forest were a dead letter; fifthly, the late exaction on the wool was out of all proportion; and, lastly, the nation did not think it expedient that the King should go to Flanders.

Edward's departure.

Edward said he could not return a precise answer for the moment, as part of his council had already sailed, and the other part was in London. On August 22nd the King himself proceeded to Ghent, leaving his son Edward, Prince of Wales, as Regent. As soon as the King had sailed, the Constable and the Marshal appeared in the exchequer, protested against the seizure of the wool, and forbade the collection of the aid until the Charters had been formally confirmed. The earls were joined by the citizens of London, and a great military force; and the Regent and his chief counsellor,

Action of the Constable and Marshal.

Reginald Grey, Justice of Chester, perceived that it was necessary to yield. A full Parliament was called for October 10th, at which knights of the shire attended as representatives of the commons, as well as the lay and clerical baronage. The former grant of an eighth and a fifth was annulled, and a new aid from the laity of a ninth was agreed to, which was afterwards extended to the towns. The Charters were confirmed on the 12th, and at Ghent, on November 5th, the King confirmed both the Charters and the new articles. Archbishop Winchelsey summoned a new convocation for November 20th, and at this meeting the clerical difficulty was overcome. To avoid both royal and papal censures the clergy taxed themselves, the southern province granting a tenth and the northern a fifth.

Confirmation of the Charters.

The new articles in the *Confirmatio Chartarum*—which acquired the force of a statute, though it was drawn up in the form of a charter—were very important. They were embodied in two forms—French and Latin. The French articles were seven in number, attested by the Regent and sealed with the great seal. The Latin version, preserved by Walter of Hemingburgh, contained six articles, purporting to be sealed not only by the King, but by the barons and bishops. The Latin form is generally known as the statute *De Tallagio non concedendo*; it is referred to as a statute in the preamble to the Petition of Right, and was recognised as such by a decision of the judges in 1637. Originally, however, it was a mere "abstract, imperfect and unauthorised, of the Regent's Act of Confirmation, and of the Pardon of the Two Earls." The contents of the two documents varied. The French version declared the confirmation of the Charters; recognised the nullity of all proceedings taken in contravention of them; authorised the publication of them at the cathedrals, and the reading of them once a year to the people; directed the excommunication of offenders against them; granted that the recent exactions, aid, and prises should not be made precedents; granted that from henceforth no such exactions should be taken

Character of the new articles.

The two versions.

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without the common consent of the realm and to the common profit thereof; and, lastly, gave up the maletote of forty shillings on wool, promising that no such tax should be taken in future without the common consent and goodwill, the king's right to the ancient aids, prises, and custom on wool being saved by a distinct proviso in each case. The French version did not contain the word tallage, and it omitted the amnesty provided for in the Latin; while the latter did not reserve the rights of the King. The French form was that in which the enactment became a permanent part of the law, and by the exact terms of which Edward held himself bound.[1]

Taxation claimed by Parliament.

The exclusive right of Parliament to impose taxation now became an accepted axiom of the Constitution, although it was subsequently infringed by tyrannical sovereigns. The articles generally represented the gain of a struggle extending over a period of eighty-two years; and while verbally they seemed to indicate but little advance over John's Great Charter, in reality they were infinitely more important, as there was a power now behind them with due machinery for their enforcement. The ecclesiastical difficulty assisted the earls in working out a constitutional revolution of which they had scarcely any conception. It is surprising that such a concession should have been extorted from a king like Edward, whose exactions were small compared with those of his father, and whose legislation, so far from being contrary to the spirit of the Charters, was mostly in harmony with them.

The Charters again confirmed.

In 1298, after the king's return to England, the Earls of Hereford and Norfolk, doubting his sincerity or the binding force of his confirmation at Ghent of his son's acts, demanded a second formal confirmation of the Charters. This Edward reluctantly granted on March 8th, 1299; but with a comprehensive proviso as to the forests, saving the rights of the crown. The great and open discontent of the people at this unlooked-for reservation,

[1] Stubbs's *Constitutional History.*

induced Edward to repeat the process shortly afterwards without the obnoxious saving clause. The Charters were yet again affirmed on March 16th, 1300, at London, in the most completely constituted Parliament that had been called since 1296. The statute passed by this parliament, *Articuli super Cartas*, was an important act, containing numerous alleviations of popular complaints, but not repeating the points conceded on October 10th, 1297. This statute, however, ordained that three knights should be chosen in every county to hear and determine from day to day, in a summary manner, all complaints against the king's ministers, and other persons who offended against the Charters.

Their final confirmation in 1301.

A final confirmation of the Charters was made by the King at a Parliament held at Lincoln, January 20th, 1301. This assembly was one of historical significance. Edward refused to ratify the disafforestments until he had obtained a distinct assurance from the prelates and baronage that it could be done without a breach of his royal obligations, and without detriment to the crown. "The barons petitioned for the removal of the treasurer, Walter Langton, and presented, through Henry of Keighley, knight of the shire for Lancashire, a bill of twelve articles, to each of which the king returned a formal answer. They demanded, in the name of the whole community, the confirmation of the Charters; the definition, in Parliament, of the functions of the justices; the immediate execution of the disafforestments; the immediate abolition of the abuse of purveyance; a new commission to hear complaints; and the enforcement of general redress before money was granted. This done, they proposed to grant a fifteenth in lieu of the twentieth already granted; the prelates, however, refused to allow the goods of the Church to be taxed in opposition to the Papal prohibition. Edward keenly felt the ungenerous suspicions to which he was subjected, and ordered the knight who had presented the bill to be imprisoned. The disafforestation in particular was repulsive to him, for he was called on to ratify arrangements which were

not yet made. He yielded, however, to compulsion, and consented either expressly or with some modification to all these claims, except that which recognised the necessity of the Pope's consent to the clerical payment; on January 30th the knights of the shire were allowed their expenses and suffered to go home; and on February 14th Edward confirmed the Charters."[1] This is stated to have been the thirty-second confirmation of the Charters; and it has been remarked that the constitutional articles of the Great Charter of John, omitted in the reissue of 1216, were never replaced.

First imprisonment of a member.

The imprisonment of Henry of Keighley is the first act of violence we read of on the part of a sovereign against a popular representative, when acting in his constitutional capacity as a member of Parliament. His incarceration, however, was of brief duration, for according to the parliamentary writs he soon reappeared in Parliament and in the public service.

Edward and the nation resist the Pope.

The Parliament of Lincoln was memorable for its resistance to the demands of Boniface VIII., as well as for the confirmation of the Charters. By a bull issued in 1299, the Pope had claimed lordship over Scotland, and forbidden Edward to molest the Scots. The King resisted the claim, with the support of the nation, and at Lincoln the barons took up the matter. On behalf of the whole baronage, numbering 104, a letter was written defining the grounds of the English claim, and affirming that the kings of England never had answered, or ought to answer, touching this or any of their temporal rights before any judge — ecclesiastical or secular. "Therefore after discussion and diligent deliberation the common concordant and unanimous consent of all and singular has been and is, and shall be, by favour of God, unalterably fixed for the future, that the King shall not answer before the Pope, or undergo judgment touching the rights of the kingdom of Scotland or any other temporal rights; he shall not

[1] Stubbs's *Constitutional History*.

allow his rights to be called in question or send agents; the barons are bound by oath to maintain the rights of the crown, and they will not suffer him to comply with the mandate even were he to wish it." Such was the answer given by seven earls and ninety-seven barons, for themselves and for the whole community of the land, on February 12th, 1301. The King supplemented the answer by a detailed historical statement of his claim. Archbishop Winchelsey appears to have favoured the Pope's view in this matter, and to have adopted generally at this time a reactionary policy against Edward, which led the King to take somewhat vindictive proceedings against him after the death of Boniface.

The Forest Laws.

Edward's exceeding dislike of the Forest Reforms led him, in 1305, to seek and obtain from Clement an absolution from the observance of the Charters he had solemnly confirmed. This act was not in accordance with his general policy, which was almost uniformly just; but it must be added to his credit that he never acted upon the absolution, except as to the Forest articles.

Edward's later legislation.

The later legislation and taxation in Edward's reign may be briefly indicated. The King's expensive French and Scottish wars obliged him to cast about for new sources of revenue. In 1304 Edward took a tallage of a sixth from the demesne lands, cities, and boroughs. At a Parliament held at Westminster in February 1305 the barons gave their consent to a statute forbidding the payment of tallages on monastic property, and other imposts by which money was raised to be sent out of the country. But as the act had not received the assent of the clergy or the Commons, it was not published until 1307, in which year, at a Parliament which met at Carlisle on January 20th, it was formally endorsed and passed. In a Parliament held at Westminster in 1306, Edward was voted an aid on the occasion of the knighting of the Prince of Wales, but he agreed that it should not be prejudicial to the rights of the estates, and should not be drawn into a custom.

The closing years of Edward I. were mainly occupied with

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the war with Scotland. From 1297 to 1304 Wallace heroically struggled for his country, but in 1305 he was taken and executed. Scotland was now fully annexed by Edward.

The war with Scotland.

who designed that it should send representatives to the English Parliament. Peace had been concluded with France some years before Edward had married Margaret, the sister of Philip. In 1306 there was another patriotic rising in Scotland, when Robert Bruce revolted, killed the regent Comyn, and was crowned king at Scone. Edward marched northwards to subdue Bruce, but was

Death of the King.

seized with mortal illness at Burgh-by-Sands, and died there on July 7th, 1307.

Character of Edward the First.

Edward I., who has justly been styled the greatest of the Plantagenets, "was the first English ruler since the Conquest who loved his people with a personal love and craved for their love back again. To his trust in them we owe our Parliament, to his care for them the great statutes which stand in the forefront of our laws. Even in his struggles with her, England understood a temper which was so perfectly her own, and the quarrels between king and people during his reign are quarrels where, doggedly as they fought, neither disputant doubted for a moment the worth or affection of the other."[1] Edward was a strange admixture of warring qualities. Terrible in his vengeance and passionate in his wrath, he was yet just, temperate, reverent of duty, and religious. He was impulsive, generous, and ready to forgive. In fact, he had many of the best qualities of the man, the statesman, and the soldier.

The Commons reluctantly attend Parliament.

It is noticeable that the Commons, who were directly summoned to Parliament by Edward, manifested in the outset a strange reluctance to attend. They only neglected their rights, however, and did not desire to secede from the constitution; and, little as they dreamed of it, the time was rapidly approaching when they were to become the foremost class in the national Parliaments. Amongst other important changes effected at this period

[1] Green's *History of the English People.*

was the summoning of Parliament to Westminster, instead of to various provincial towns, as had frequently been the case. This gave to the legislative assembly "a local habitation and a name," and invested it with a permanent character.

Borough representation.

It appears from the parliamentary writs that in the reign of Edward I., 165 cities, towns, and boroughs were summoned to send members. They were thus distributed through the respective years named: in 1283, 21; 1295, 94; 1298, 12; 1299, 1; 1300, 9; 1302, 9; 1304, 13; and 1306, 6: total 165. Some of the boroughs persisted in making no return to the sheriff, while others bought charters of exemption from the irksome privilege. Out of the whole 165 constituencies, more than a third ceased to send representatives after a single compliance with the royal summons. From the reign of Edward III. to that of Henry VI., the sheriff of Lancashire declined to return the names of any boroughs at all within that county "on account of their poverty." Not infrequently legal measures were necessary to compel the attendance of members, but in spite of all difficulties, borough representation in England was continuous from the Parliament of 1295.

Edward the First's model Parliament.

I hoped to be able to tabulate a list of the constituencies represented in Edward's model Parliament of 1295; but this is impossible, although I have diligently sought to accomplish it. The fact is, that many of the boroughs summoned failed to make a return; while on the other hand great partiality was exercised by the sheriffs in issuing precepts to various boroughs within their jurisdictions. For example, Christchurch had only one precept, while Basingstoke, in the same county, had four. Prynne, in his *Parliamentaria Rediviva*, furnishes a good deal of interesting information respecting the summonses, but it is unfortunately neither exhaustive nor accurate. Dr. Brady, in his *Treatise on Boroughs*, advanced some additional information; but here again the compiler was at fault on the score of accuracy. The errors of these two writers were corrected by Dr. Browne

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Willis, in his *Notitia Parliamentaria*, a history of the counties, cities, and boroughs in England and Wales, in three volumes, the first volume of which was published in 1730. The author was not able to complete this work according to his original plan, but as it stands it is a valuable mine of historical lore concerning the ancient boroughs. Dr. Browne Willis shows us, as the result of great research, what counties and boroughs were represented in the time of Edward I.; but he is unable to give us the whole of the constituencies represented in the Parliament of 1295. The entire subject of the representation of these early boroughs is one of great uncertainty and difficulty. To show that there was no system or method observed, I cannot do better than cite a few examples. The borough of Melcombe, for instance, received writs of summons in the years 33 and 34 Edward I., yet the bailiffs made no return before 8 Edward II. Gatton was made a borough by Henry VI., and continued returning a member from the 29th of his reign, yet a document in the Rolls of 33 Henry VIII. shows that at that time there was only one inhabitant in the borough. The important town of Hull only sent once before 12 Edward II. Tregony sent to Edward's famous Parliament, but after his reign it never returned burgesses to Parliament until 1 Elizabeth. Tewkesbury, though a very ancient borough, did not return burgesses to Parliament before the time of James I. Hertford made twenty returns in the reigns of Edward I., II., and III.; but then ceased, and was not restored until 21 James I. Yarmouth and Newport, in the Isle of Wight, returned two burgesses to Edward I.'s great Parliament, and never sent afterwards to any Parliament until 27 Elizabeth. Evesham also returned to the Parliament of 1295, and once to a council 11 Edward III.; but never afterwards until James I. enfranchised and incorporated it at the request of his son Henry, Prince of Wales. These examples will be quite sufficient to demonstrate the erratic nature of borough representation, and the impossibility of tracing the precise constitution

Curiosities of borough representation.

of any of the early Parliaments, so far as the representation of the boroughs is concerned.

Privileges of members.

Hatsell, in his *Precedents of Proceedings in the House of Commons*, cites as the first case touching the privilege of Parliament, one entered in the roll of Petitions in Parliament in 18 Edward I. It is also cited by Sir Edward Coke in the Fourth Institute. It related to the seizure of the goods of the Master of the Temple; from whence it appears, says Coke, that "a member of the Parliament shall have privilege of Parliament, not only for his servants, as is aforesaid, but for his horses, etc., or other goods distrainable."

Constitutional results of Edward's reign.

In passing from the important reign of Edward I., the constitutional results which had now become secured to the English people must be recounted. First, the Parliament was now "not only a concentration of local machinery, but an assembly of estates. The Parliament of the present day, and still more clearly the Parliament of Edward I., is a combination of these two theoretically distinct principles. The House of Commons now most distinctly represents the former idea, which is also conspicuous in the constitution of convocation, and in that system of parliamentary representation of the clergy which was an integral part of Edward's scheme: it is to some extent seen in the present constitution of the House of Lords, in the case of the representative peers of Ireland and Scotland, who may also appeal for precedent to the same reign. It may be distinguished by the term local representation as distinct from class representation." The third estate had only consultative, and not legislative rights, even under Edward I. The word Commons has been used in various senses. It "is not in itself an appropriate expression for the third estate; it does not signify primarily the simple freemen, the plebs, but the plebs organised and combined in corporate communities, in a particular way for particular purposes. The Commons are the *communitates*, or *universitates*, the organised bodies of freemen of the shires and towns; and the estate of the

Representation.

The Third Estate.

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Commons is the *communitas communitatum*, the general body into which for the purposes of Parliament these communities are combined. The term, then, as descriptive of the class of men which is neither noble nor clerical, is drawn from the political vocabulary, and does not represent any primary distinction of class."[1]

The Spiritual Estate.

With regard to the position of the clergy, and the spiritual estate generally, we have seen that the growth of the canon law into a regular system, and the establishment of ecclesiastical courts, gradually led to clerical exemptions from ordinary jurisdiction, which produced constant friction. To remedy this Henry II. passed the Constitutions of Clarendon; but clerks charged with criminal offences continued to be still handed over to ecclesiastical tribunals if they claimed benefit of clergy, and this privilege was not entirely abolished until 1830. Touching the prelates, in the Anglo-Saxon and Norman times they had a baronial status, though they also enjoyed ecclesiastical privileges. Under Henry I. and Henry II. the bishops and abbots, as tenants-in-chief, sat with the barons, and granted aids, etc. Even now, although they do not hold baronies, the bishops are summoned to the House of Lords. The archbishops of Canterbury and York, and the bishops of London, Durham, and Winchester, always sit as lords spiritual in the Upper House; and of the other bishops, twenty-one are summoned to Parliament in order of seniority of creation. The bishop of Sodor and Man is in no case a lord spiritual; and by an Act of 1847 it was decided that the number of lords spiritual should not be increased by the creation of new bishoprics.

Unity in the clergy.

The growth of unity in the estate of the clergy was greatly fostered by the conciliar action in the Church under Lanfranc and Anselm; and also by the growth of the canon law, which distinguished the clerical from the lay estates. Other causes also had an influence in

[1] Stubbs's *Constitutional History*.

defining the separate status of the clergy, such as the struggles for clerical immunities, and the taxation of clerical property, and especially the charges upon the spiritual revenues. The repeated applications for grants from the spiritualty gave rise to the custom of assembling the clergy in distinct assemblies for secular business, and this largely influenced the history of both Parliament and Convocation.

Estate of the baronage.

Touching the estate of the baronage, the reigns of Henry III. and Edward I. clearly defined the line of demarcation between lords and commons. The great landowners and titled lords had quite a distinct character from the knights of the shire, who represented the great body of freeholders. The qualification changed from barony by tenure to barony by writ. The English nobility have no parliamentary right derived from mere nobility of blood. Their political privileges are due to their position as hereditary counsellors of the crown—a position once defined by tenure of land, then by summons, and subsequently by patent. "English law recognises simply the right of peerage, not the privilege of nobility as properly understood; it recognises office, dignity, estate, and class, but not caste."[1] Barony was not created by the extent of tenure, or by its nature; in practice the title and rights of baronage were gradually restricted to the greater tenants who received special summons. The feudal rule and customs encouraged the introduction of succession by primogeniture. In Glanvill's time—that is, in the twelfth century—estates held in socage—which was a tenure of lands characterised by the fixedness of the service due from it—were equally divided among the sons, the eldest receiving the capital messuage; and the exclusive rights of the eldest born date from the thirteenth century. What is very clear is, that "the baronage was ultimately and essentially defined as an estate of the realm by the royal action in summons, writ, and patent." It is to the body of select

[1] Stubbs's *Constitutional History*.

CHAP. IV. Edward I., the Great Legislator.

hereditary barons, joined with the prelates, that the term "peers of the land" properly belongs; "an expression which occurs first, it is said, in the Act by which the Despensers were exiled, but which before the middle of the fourteenth century had obtained general recognition as descriptive of the members of the House of Lords."[1] The estate of the peerage is identical with the House of Lords, and the Lords' Report thus defines its political status: "The hereditary peers of the realm claim (1), in conjunction with the lords spiritual, certain powers as the King's permanent council when not assembled in Parliament; (2), other powers as Lords of Parliament when assembled in Parliament and acting in a judicial capacity; and (3), certain other powers when assembled in Parliament together with the Commons of the realm, appearing by their representatives in Parliament, the whole now forming under the King the legislature of the country."

Knights of the shire.

The third estate in England not only included the popular representatives, but the landowners under baronial rank. This originally gave great strength to the representative system, for the knights of the shire, numbering seventy-four, formed a bulwark which neither the King nor the sheriffs could overcome. The sovereign might reduce the number of barons summoned, and the sheriffs might reduce the representatives of the towns; but the knights were free and independent.

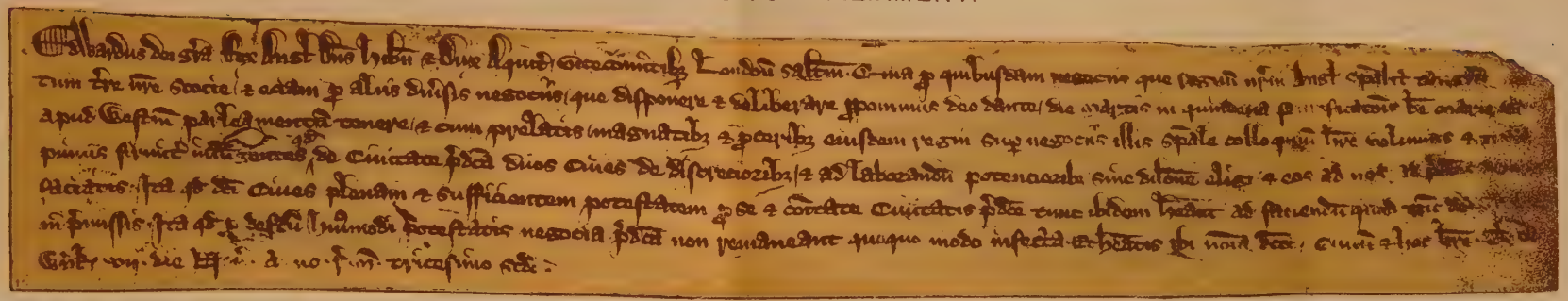
The Commons, how elected.

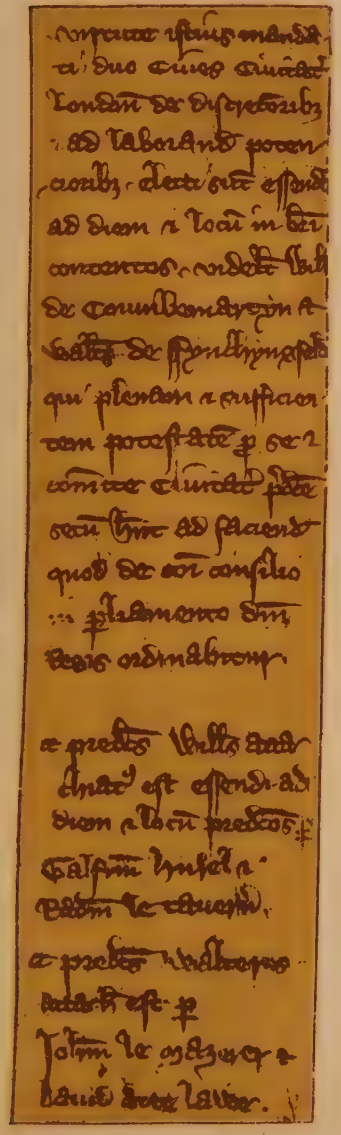
As the distinguishing mark of the reign of Edward I. in constitutional history is the representation of the Commons, it will be of moment to see the steps by which it was carried out. Foremost of the local organisations was the county court. It was anciently held in the open air, and included all landowners in the shire. The county court was thus a shiremoot. It next developed a tendency to delegation, and included the reeve and four "best men" from each township, as well, probably, as the twelve thegns from each hundred or borough. This semi-representative

The county court.

[1] The Lords' Report, Statutes of the Realm, and Dr. Stubbs.

WRIT OF EDWARD I. DIRECTING THE SHERIFFS OF LONDON TO RETURN TWO MEMBERS TO PARLIAMENT.





TRANSLATION OF THE WRIT.

Edward, by the grace of God, King of England, Lord of Ireland and Duke of Aquitaine, to the Sheriffs of London, Greeting.

Whereas for certain matters which specially concern our Kingdom of England [and also the establishing] of our land of Scotland, and also for divers other matters, which we propose, God willing, to dispose of and deliberate upon, on Tuesday in the Quindenes of the Purification of the Blessed Mary the Virgin [next to come, and also] to hold a Parliament at Westminster, and, with the Prelates Magnates and Peers of the same Kingdom, we would have a special colloquy and treating upon those matters, We, firmly enjoining, have commanded you that, without delay, you cause to be elected, from our city aforesaid, two citizens of the more discreet kind and the better able to labour, and that you [send] them to us at the aforesaid [day and place]. So that the said citizens may then there have full and sufficient power, for themselves and the commonalty of the aforesaid city, to do what then [shall, of counsel, be ordained] in the premises; so that, for default of such power, the matters aforesaid may not remain in anywise undone. And that you have there the names of the said citizens, and this Writ. Witness ourself at Brustwykes, the 7th day of November in the 32nd year of our reign [A.D. 1304].

The answer to the Writ, written on the back of it, making the Return directed.

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH
PUBLIC LIBRARIES

Translation of the Return to the above Writ.

By virtue of this mandate, two citizens of the City of London, of the more discreet kind, and the better able to labour, were elected to be at the day and place in the Writ contained: that is to say—William de Coumbemartyn and Walter de Fynchyngfield, who have with them, full and sufficient power for themselves and the commonalty of the city aforesaid to do what of counsel in the Parliament of the Lord the King shall be ordained. And the aforesaid William is attached to be at the day and place aforesaid, by Geoffrey Husel and Ralph le Taverner, and the aforesaid Walter is attached by John le Mazerer, and David atte Lawe.

The right hand corner of the Writ is torn and soiled. The words appearing in the Translation, within square brackets, are supplied from another Writ for the same Parliament.

court now met monthly, while its older and fuller form still assembled twice a year, chiefly for crown purposes. The civil justice of the county court gradually travelled up to Westminster, and its criminal pleas belonged to the King, and were executed by his itinerant justices. But in both civil and criminal cases the crown used "recognitors"—that is, called in the shire to co-operate. In 1194 four knights acted for the whole shire in electing the grand jury of each hundred; under Henry III. four knights of each shire proceeded to Westminster to discuss the interpretation of articles in *Magna Carta*; and knights to the number of two, three, or four from each shire met to assess, or assess and collect, the carucages. When the knights came to be elected by the whole county court, in 1254, the stages were completed by which the shiremoots could be dispensed with, and their authority transmitted to a Parliament.

Attendance in the shiremoot.

All persons, however high their station, were required to attend the full shiremoot, but the barons secured their representation by attorney under the *Statute of Merton*, while the *Statute of Marlborough*, 1267, exempted all above the degree of knights, unless specially summoned. By the thirteenth century the old folkmoot had passed into a mere formality; but it did not expire before giving rise to the important idea of local representation. The shire organisation accomplished its task by causing the elections to Parliament to be by all the freeholders, and not merely the chief tenants, and by closely uniting the burgesses and the knights. Its other functions fell off with the growth of the justices of the peace, except that of electing and instructing the parliamentary representatives; and finally, in 1334, it ceased to assess and collect from the townships the tax granted in Parliament.

The sheriff.

The sheriff was an officer who played a conspicuous part in our early constitutional and Parliamentary history. For some time before the Conquest the sheriff—or *scir-gerefa*, or shirereeve—was nominated by the Crown, though at an earlier period still he may have been chosen in the folkmoot. "He acted as the king's

steward, collecting and administering the royal dues in his shire, and presiding over the shiremoot, or assembly of freeholders. Under the Normans the sheriff was the representative of the crown in judicial, fiscal, and military affairs. The vast power exercised by men holding the sheriffdom of several counties was injurious to the interests both of the crown and of the people, and when, as was sometimes the case, the King's justices, to whom the sheriffs had to render their accounts, were themselves made sheriffs, they had ample opportunities for fraud."[1] Such abuses led to Henry II.'s great Inquest of Sheriffs in 1170, and the temporary removal of all the sheriffs in England from their offices. Hereditary sheriffdoms had by this time almost died out, but they were not formally abolished by statute until 13 and 14 Victoria.

His functions.

Later history of his office.

Statutes of Edward III. and Richard II. limited the sheriff's tenure of office to one year. The last remnants of the criminal jurisdiction of the sheriffs were swept away by Edward IV.; their military functions were committed to lords-lieutenant in the reign of Mary; and Elizabeth curtailed their powers of extortion in levying execution, etc. But as a judicial functionary the sheriff still continued to hold a county court for the election of members of Parliament and for several other purposes. As keeper of the King's peace he is the first man in the county; and he is, moreover, charged with the execution of all civil and criminal processes and sentences. He relegates nearly all his duties, however, to an under-sheriff. Until 40 and 41 Victoria he was to some extent liable for the escape of a prisoner. The office of sheriff in Scotland has long been purely nominal, but that of sheriff depute is one of great importance and wide jurisdiction.

Election of Knights of the Shire.

Researches on the question of the election of knights of the shire to Parliament point to the conclusion that "both the right of election and the burden of contribution belonged to the whole of the suitors to the county

[1] Stubbs's *Constitutional History*.

court"; but of course the magnates of a county had great influence over their tenants in the shiremoot. With respect to the elections in boroughs much obscurity prevails. Some writers favour the supposition that the towns which were directed to return representatives were the demesne boroughs of the crown only; but others—including Prynne and Hallam—incline to the view that all the town communities which the sheriff regarded as qualified under the terms of the writ were represented. Certainly in the reign of Edward I. the towns returning members were not merely the demesne towns of the crown; and Bishop Stubbs conclusively proves this by citing several cases. Many boroughs were the appanage of bishops, such as Lynn and Salisbury; others belonged to nobles, such as Arundel and Tunbridge; and others again to abbots, such as Evesham and St. Alban's. The writ of 1296 is regarded as expressing accurately the state of things touching the boroughs. In this writ "the grant is distinctly said to be made by the citizens, burghers, and other goodmen of all and singular the cities and boroughs of the kingdom of whatsoever tenures or liberties they were, and of all the royal demesnes." Only in the case of London are there authentic details concerning the elections in the time of Edward I. It appears that in 1296 all the aldermen and four men of each ward met on September 26th, and chose Stephen Aschewy and William Herford for the Parliament of St. Edmund's; and on October 8th the *communitas* was called together—to wit, six of the best and most discreet men of each ward—by whom the election was repeated and no doubt confirmed. It cannot be safely predicated, however, whether the action in London was analogous to the mode of election in boroughs generally.

The boroughs.

In the reign of Edward I. the number of cities and boroughs represented was 165 or 166,[1] and the number of counties 37. Assuming that all the constituencies

Number of members.

[1] Dr. Stubbs says 166; but Parry, who gives the cities and boroughs for each year, says 165.

returned two members each, the aggregate body would only number 406; but in reality the total number would be considerably below this, as many towns did not return two members. Members were paid for the whole time of their service, their journey to and fro, and their stay in Parliament. In the 16th of Edward II. the wages of the representatives were fixed at four shillings per day for a knight, and two shillings for a citizen or burgher. Payment, indeed, seems to have been made from the earliest times to the knights of the shire and burgesses. The writs were issued after the dissolution of Parliament on the request of the members who had served, and Prynne has regularly traced these payments down to the end of Henry VIII.'s reign. Payments were voluntarily made by boroughs after that. The well-known Andrew Marvell, who sat for Hull in the reign of Charles I., has been erroneously reported the last recipient of a salary. In 1681, three years after Marvell's death, Thomas King, who had been member for Harwich, obtained from the Lord Chancellor a writ against the Corporation for his expenses. Lord Chancellor Campbell, in citing the case of King in his *Lives of the Chancellors*, gave it as his opinion that the writ for expenses might still be claimed, and that no new law is required for those who desire to resume the ancient practice.

Their wages.

Drawbacks to progress.

Although by the time of Edward I. Parliament had gained many valuable rights, which have been described in their order, there were still two drawbacks that to some extent discounted those rights. The first was the recognition of the King's prerogative in regard to acts done upon his own authority of the same class as those for which he asked counsel of the estates; and the second was the right of individual members to concede or to refuse consent to the determinations of the whole body—the latter evil being increased by the incompleteness of the national representation before the Parliament of 1295. Moreover, the Parliament had not yet excluded the power of the Crown to tax and to legislate. The King could still take his customary aids, without reference to

parliament, and he could likewise legislate by assize or ordinance. The political action of the crown in matters both foreign and domestic, could be determined without reference to anything but the royal will. The national council was still powerless to check the authority and the proceedings of the inner council, the sovereign's personal advisers.

Taxation.

The barons and superior clergy present in the national councils frequently assented to taxation for themselves "and for the community of the whole realm, so far as in them lay," thus binding the unrepresented classes—the commons and the parochial clergy. The king, however, did not always venture to collect the tax thus granted. But it was either a fiction to represent that the villeins and the commons consented to these taxes through their superiors, or the action of the central assembly must have been supplemented by the assent of the county courts, in which alone at that time the freemen and the villeins assembled. Special commissions to raise money ceased generally by the year 1295, and the communities by their representatives now began to join in the act of the sovereign body. Although the three estates made their grants in different measure and by separate vote, from 1295 onwards they were fully represented, and acted in this, as in other respects, in the character of a consolidated parliament. The right to grant customs was next claimed by Parliament, and it was recognised by Edward in 1297, in confirming the Charters. When taxes were granted by the nation, the law imposing them was enacted by the king with the advice and consent of parliament, and after this it was no longer in the power of any one to withhold obedience.

Legislation, how effected.

Although legislation was proper to the royal or national council—which, at the end of the thirteenth century, contained the magnates, the inferior clergy, and the commons—"the right of the nation to determine by what laws it would be governed was fully admitted." Even the Great Charter and the Provisions of Oxford

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seemed to lack somewhat of legal force until they had been promulgated in the county courts. "The enactment of Edward II. in 1322, that matters to be established touching the estate of the king and his heirs, the realm and the people, shall be treated, accorded, and established in parliament by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, is but an amplification of the principle laid down by his father in 1295. From the action of the king in reference to mortmain, a statute passed with the counsel and consent of parliament, however constituted, could not be abrogated without the same counsel and consent." As to the judicial powers of parliament, the commons never shared in them. The respective shares of the estates in the national deliberations differed considerably. The writs show that counsel was distinctly asked from the magnates, while co-operation and consent only were expected from the commons.[1]

Voting in the national councils.

No light has yet been thrown on the method of voting in the old national councils. In the *Select Charters* a treatise is published entitled *Modus Tenendi Parliamentum;* but its authenticity has been strongly assailed. The document was probably drawn up in the reign of Edward III., but as it contains "statements that seem to describe an ideal of the writer rather than the existing condition of things," it "can nowhere be relied on as applicable to the machinery of parliament under the rule of Edward I." Until the Houses were divided the share of the knights, citizens, and burghers in the debates was probably very small indeed, the oratory being monopolised by those skilled in affairs, those of influential position, and those who could lay claim to an eloquent use of French or Latin.

Coustitution of the king's council.

The king's council was a body which in the minority of Henry III. began to acquire great importance. It contained the officers of state and of the household, the whole judicial staff, a number of bishops and barons, and

[1] Stubbs's *Constitutional History.*

others simply styled counsellors. Together they formed a permanent, continual, or resident council, for despatching business and advising the sovereign, but chiefly for transacting the business of the court. Attempts were frequently made to reform it. Under Edward the council was still accepted as part of the general system of government. It continued to include the judges, for it was as members of the royal council that from the year 1295 they were summoned to the parliaments and great councils of the nation. With respect to the position of members of the council in parliament, the earls, barons, and bishops had their own constitutional rights; but with the judges it was different. "The mere counsellor would not have, as such, a voice in taxation; and hence probably arose the custom of regarding the judges and other summoned counsellors as rather assistants than members of the parliament or great council; and thus perhaps the judges, and the lawyers with them, lost their chance of becoming a fourth estate."[1] In Edward I.'s time, while the constitution was being remodelled, there was some confusion as to the functions of the king's council and those of the national council. The sovereign acted in both. The hearing of petitions involved much labour upon the permanent council,—so much so that in the eighth year of Edward I. it was ordered that all petitions should be examined by the judges, and that only matters of extreme importance, in which reference must be made to the sovereign, should be brought before the king and council.

Judicial reform.

The judicial machinery of the kingdom was practically perfected at the time of Edward I. In the beginning of his reign are to be found Chief Justices of Common Pleas, as well as of the King's Bench; and the succeeding reign witnessed a regular succession of Chief Barons of the Exchequer. The Lord Chancellor's separate and independent equitable jurisdiction began to assume shape as the Court of Chancery in the reign of Edward III.

[1] Stubbs's *Constitutional History*.

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Reforms in the provincial judicature were a further special feature of the reign of the First Edward. He divided the kingdom into four circuits of assizes, and by a second Act ordered the justices of assize to act as justices of gaol delivery. He also instituted justices of nisi prius.

Edward the First's general policy.

During the whole of Edward's reign there were forces at work which impelled him onward in the path of constitutional progress. At the same time this must not detract from his statesmanlike prescience, which perceived the nature of those reforms of which the nation was capable. He desired to see a truly national parliament; and if at the same time he desired the strengthening of the royal power, it was only by and through the nation, and not as a system of tyranny, like that pursued by many of his predecessors. It was his object to allow no one estate of the realm to have a preponderating influence; and barons, clergy, and people he sought to weld into one harmonious whole. If he found sound constitutional materials to his hand, he certainly manipulated them with advantage and success. He had some able ministers, but he also possessed rare constructive ability of his own. It is impossible to pass from a consideration of the government of Edward I. without admiring this great king's practical wisdom; his military, judicial, and legislative talents; his highmindedness; his deep love for England; and his unfaltering determination to lift the people whom he ruled into an exalted rank in the scale of civilised nations.

CHAPTER V.

THE LATER PLANTAGENETS.

Edward II.

The greatest of the Plantagenets was succeeded by the least. For Edward II. no historian has had a good word to say. Weak and despicable in character, and given to the society of favourites as contemptible and worthless as himself, this sovereign, by his action in public affairs, soon reduced the kingdom to a pitiable condition. Abroad, England was defeated and disgraced, while at home there was nothing but treachery and misgovernment. It seemed impossible that such a being as the second Edward could be the real offspring of so great and noble a sire; and when at length his subjects in their anger resolved on his deposition, there were none to condemn this unusual exercise of the national will.

His accession.

The death of his three elder brothers made Edward heir to the throne while yet an infant. In 1301 he received the title of Prince of Wales, and in 1306 he was solemnly knighted by his father. When on his death-bed, the latter besought his son not to recall the banished Piers Gaveston, his evil spirit, and he further exhorted him to prosecute the war against the Scots; but he disregarded both these parental injunctions. A few days after the great Edward's death, Edward II. was recognised as King, and on July 20th, 1307, he received

the homage of the English magnates at Carlisle. To this act succeeded the fealty of the Scots at Dumfries.

First Parliament.

Edward's first parliament met at Northampton, October 13th, 1307, and its business was to make arrangements for the funeral of the King's father, and his own espousals and coronation. The clergy made a grant of a fifteenth, the counties a twentieth, and the cities and boroughs and ancient demesnes a fifteenth of their movables. At Boulogne, on January 25th, 1308, Edward married Isabella, daughter of Philip the Fair, having previously done homage to Philip for Aquitaine and Ponthieu.

Importance of his coronation.

The coronation of Edward II. took place at Westminster, on Sunday, February 24th, 1308. Archbishop Winchelsey being too ill to attend in person, the Bishop of Winchester acted as his deputy, and performed the ceremonies of anointing and crowning. The oath taken at this coronation was of great constitutional importance, for it not only clearly recognised the limitation of the Royal power by existing laws, but that the power of altering these laws and enacting others could only be exercised with the consent of the commonalty. Four new promises were introduced, which had a more definite character than the terms of the ancient oath. First, in reply to the question whether the King would keep all the laws and customs of his predecessors, and especially those of "the glorious King Saint Edward," his majesty replied, "I grant them and promise." The remaining three questions were thus asked and answered: "Sire, will you keep towards God and Holy Church, and to clergy and people, peace and accord in God, entirely after your power?" "I will keep them." "Sire, will you cause to be done in all your judgments equal and right justice, and discretion in mercy and truth, to your power?" "I will so do." "Sire, do you grant to hold and to keep the laws and righteous customs which the community of your realm shall have chosen, and will you defend and strengthen them to the honour of God, to the utmost of your power?" "I grant and promise." The historical importance of this new form consists in the

fact of its recognition of the constitutional order of things established by Edward I. It was well expressed in the maxim that "that which touches all shall be approved of by all"; the people thereby being brought into close relations with the sovereign and the government. Edward II. himself, as we shall presently see, not only clearly ratified, but even extended, this constitutional principle. The sovereign took the oath in the French form provided, as he was not proficient in Latin.

Piers Gaveston.

Almost immediately, Edward was in conflict with the magnates with respect to his favourite, Piers Gaveston. The King created him Earl of Cornwall, gave him in marriage his niece Margaret, and appointed him regent during his own visit to France. The rise of the favourite caused great popular discontent, and at a Parliament held at Westminster, April 28th, 1308 (adjourned from the previous March), Gaveston's expatriation was discussed, the result being that he was banished from the kingdom. Yet in the course of a month Gaveston went over to Ireland as regent, loaded with presents from the King.

The Earl of Lancaster.

The most influential person now in the realm was Earl Thomas of Lancaster, a bitter opponent of Gaveston, by whom he had been insulted. Lancaster was cousin to the King, uncle to the Queen, High Steward of England, possessor of the earldoms of Lancaster, Leicester, and Derby, and he was married to the heiress of Henry de Lacy, Earl of Lincoln and Salisbury. From his position, wealth, and antecedents, he seemed specially designed for a leader of opposition, but he had neither the ability nor the political wisdom of a De Montfort, and was violent, unscrupulous, and personally ambitious.

Parliament of 1309.

Legislation, at this juncture, was at a standstill, and Edward was in want of money. He was compelled, therefore, to call a full Parliament of clergy, lords, and commons, which assembled at Westminster on April 27th, 1309. The commons promised to grant a twenty-fifth of their movables on condition that the King would answer and redress their grievances, which were embodied in eleven articles. These articles, presented in the

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name of the whole community, complained of the abuses of purveyance, and the seizure of articles of food; the imposts on wine, cloth, and merchandise; the uncertainty in the value of the coinage; the usurped jurisdiction of the royal stewards and marshals; the want of machinery for receiving and securing attention to petitions addressed to the King in Parliament; the exactions taken at fairs: the delay of justice caused by the granting of writs of protection; the sale of pardons to criminals; the illegal jurisdiction of the constables of the royal castles in common pleas; and the tyranny of the king's escheators, who, under pretence of inquest of office, ousted men from lands held by a good title. At the same time that the third estate thus boldly sought to initiate action in Parliament, they peremptorily rejected Edward's proposal that Gaveston should be allowed to return.

Return of Gaveston.

Yet the favourite returned to England in July. On the 27th of the same month the King accepted the articles; a statute on purveyance was issued, illegal exactions were suspended, and an order for collecting the twenty-fifth was issued. A considerable portion of the baronage were brought over to tolerate Gaveston's recall, but his arrogance soon stirred the animosity of Lancaster, Warwick, and others.

Lords Ordainers appointed.

Thus matters remained until March 1310, when the bishops and barons assembled in council at Westminster. Edward had forbidden the discontented earls to appear in arms, but they presented themselves notwithstanding in full military array, and the King was obliged to give way. The assembly was one of magnates only, and consisted of the two archbishops, eighteen bishops, twelve earls, and sixty-eight barons. The lords set vigorously to work to establish their supremacy, and first presented a petition, in which they represented the dangers, impoverishment, losses, and dishonour of the existing state of things. The King was living by prises and purveyance, there was no money left for defence, and they therefore prayed redress by ordinance of the baronage. Edward gave his assent, and twenty-one Lords Ordainers were

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appointed, with authority from Michaelmas 1310 to Michaelmas 1311. Following the precedent of 1258, the bishops elected two earls, the earls two bishops; these four elected two barons; and the six electors added by co-optation fifteen others.[1] They were sworn to make such ordinances as should be "to the honour and advantage of Holy Church, to the honour of the King, and to his advantage and that of his people, according to the oath which the King took at his coronation." After the council had broken up, the king went north against the Scots, leaving the Earl of Lincoln regent of the kingdom, and after his death the Earl of Gloucester.

A new Charter.

An important Parliament assembled at London on August 8th, 1311, for the purpose of receiving the report of the ordainers. A year before this the ordainers had issued, with the assent and confirmation of the King, six ordinances, making provision for the privileges of the Church, the maintenance of the peace, the observance of the charters, the stoppage of royal gifts, the proper collection of the customs, and the calling to account of the foreign merchants, who had been receiving the customs since the beginning of the reign. Parliament now issued thirty-five additional articles of a stringent character. On October 5th the ordinances were confirmed by Edward, and published by letters patent in the form of a charter. As finally accepted, the ordinances ranged over every branch of public policy. All grants made by the King since the appointment of the commissioners were declared void, and none were to be afterwards made without the consent of the baronage in Parliament; no new customs were to taken without the same assent; the King was not to go out of the kingdom, or to make war, without the assent of the baronage, etc.; the chancellor, chief justices, treasurer, chief baron of the exchequer, and other high officers, were to be appointed with the advice

[1] Hallam states in his *Middle Ages* that the assent of the Commons was given to these remarkable proceedings, but this does not appear to have been so.

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of Parliament; the coinage was not to be altered without great occasion, and then only by the common advice of the baronage in Parliament; Gaveston was to be perpetually exiled from all the King's dominions for having turned away the heart of the sovereign from his people, and committed every sort of fraud and oppression; the King's foreign agents were to be dismissed; all the revenue was to be paid into the exchequer; new prises, customs, forest usurpations, and infractions of the statute of merchants were forbidden; the charters and statutes were confirmed; the Court of Exchequer was restricted to its proper business; writs by which justice was delayed and criminals were protected were prohibited; the outlawry laws were reformed, and the church courts regulated; parliaments were to be held once or twice in every year, and pleas were to be heard and decided in them; proper persons were to be named to hear complaints against the King's officers; and the jurisdictions of the marshal and the coroner, within the verge of the court, were restricted.

The ordinances.

The ordinances were drastic, but constitutionally they would have been more sound and permanent had the commons of England, and not the baronage only, been participators in the settlement. However, Edward accepted them, and appointed new officers in the Chancery and Treasury.

Gaveston beheaded.

The King subsequently went north, and at York recalled Gaveston, and restored his forfeited estates. This greatly enraged the barons, and they determined to destroy the favourite. Gaveston was obliged to capitulate at Scarborough Castle on May 19th, 1312, and he was sent south to await the meeting of Parliament. But being seized by the Earl of Warwick, he was beheaded at Blacklow Hill on June 19th, in the presence of the Earl of Lancaster.

The King's advisers.

Edward, deeply wounded by the death of his favourite, was too weak to take vengeance upon his enemies. He was now mainly under the influence of the Earl of Pembroke and of Hugh le Despenser, son of the opposition

baron in Henry III.'s time. The Despensers were fated to bring as much evil upon the King as Gaveston had done. But for the present, mediation was the order of the day, and peace was made in December 1312. Parliament was summoned, but it made no grants, and Edward was driven to all kinds of borrowing expedients to obtain money. Under the advice of Walter Langton, who had been a bitter opponent of Gaveston, and who had acted as Treasurer from March to December 1312, the royal council issued orders for a tallage, which many of the great towns, including London and Bristol, resisted. The whole nation was in a state of tension until October 16th, 1313, when a general pardon for all offences committed since the King's marriage was issued to the Earls of Lancaster, Hereford, Warrenne, and Warwick, and 469 minor offenders, who were chiefly resident in the northern counties. The Parliament which approved this pacification at Westminster, also granted liberal supplies.

A disastrous veriod.

The year 1314 was a disastrous one for England. Bruce triumphed over Edward at Bannockburn, and in the following year famine ravaged the English counties. Parliaments and councils met with considerable frequency, but little practical result. Lancaster was now at the head of the baronage, for Gloucester had been slain at Bannockburn, and Warwick died in 1315. The patriotic Archbishop Winchelsey had passed away in 1313, and Walter Reynolds—who had been Edward's tutor—had succeeded him as primate. But the King's ablest, if most dangerous adviser, was Hugh le Despenser the elder.

Edward and the ordinances.

The King now endeavoured to obtain a repeal of those ordinances which he regarded as prejudicial to the royal dignity. But a distinct understanding that the ordinances should hold good accompanied the peace of 1313, and in pursuance of them the Earls of Lancaster, Warrenne, Arundel, and Warwick refused to join in the Scottish war without the order of Parliament. Edward was beaten, and as a consequence of his action, the Parliament of York, held in September 1314, compelled the King to dismiss his

chancellor, treasurer, and sheriffs. The Earl of Lancaster's nominees took their place, and the anti-royalist party secured further advantages in the Parliament of January 1315, by drawing up regulations for the royal household, removing Hugh le Despenser and Walter Langton from the council, and placing the King on an allowance of ten pounds a day. The estates made a grant of a fifteenth and a twentieth upon certain conditions, and the clergy voted a tenth on the clear understanding that peace should be maintained, the rights of the Church preserved, the ordinances observed, and that their contribution should be levied by ecclesiastics, and its expenditure determined by the baronage.

Dismissal of ministers.

Power of Lancaster.

Lancaster was now appointed commander-in-chief against the Scots, superseding the Earl of Pembroke; and in a parliament held at Lincoln in January 1316, he was made President of the Council. Edward accepted the ordinances, the grievances of the clergy were redressed, and in view of the general peace the towns made a grant of a fifteenth, while the lords and knights promised the paid service of a foot-soldier from every rural township, and the clergy likewise promised a grant. For a time Lancaster was now practically supreme in England, but his rule was oppressive and disastrous. Private war broke out between the Earl and Warrenne, in consequence of the abduction of Lancaster's wife. Lancaster's popularity declined, and the King, aided by the two Despensers, endeavoured to govern without him. A middle party was formed, and a permanent council appointed. A formal reconciliation took place between Edward and Lancaster, and a parliament held at York in 1318 confirmed the treaty of peace and the pardons, and passed a statute improving the judicial procedure. In 1319 another parliament held at York granted an eighteenth from the barons and the shires and a twelfth from the towns. The commons in this parliament sat from May 6th to 25th, when they were dismissed, the knights receiving four shillings per diem, and the citizens and burgesses twenty pence.

Constitutional points.

Several interesting and important matters occurred in connection with this parliament of 1319. The Abbot of St. James's Without, Northampton, never having been summoned hitherto, and being ill, appointed a procurator or special attorney to represent him. The latter refused to appear, "as the name had never been enrolled before, and he did not hold anything *in capite*, or by barony, but only by way of free alms. He would not excuse his principal on the ground of infirmity," etc. The Abbot sought relief, and he was ordered by the Chancellor to be expunged from the Registers of Chancery.[1] Secondly, Prynne shows that the first returns of any burgesses by indentures tacked to the writs are those of the sheriff of Bedford and Bucks, made for the burgesses of Bedford and Wycombe, filed to the writ for this parliament. Finally, one of the earliest instances of a contested election occurred in connection with the parliament of 1319. A petition was presented to the council from Matthew de Cranthorne, who had been elected for Devonshire, whereas the sheriff had returned others in his stead, against the will of the commune.[2]

Statute of Westminster the Fourth.

On October 6th, 1320, a Parliament met at Westminster, to which the commons were summoned, without the inferior clergy. Four representatives for London sat in it. Many petitions were presented on the subject of tenures, etc., and the Statute of Westminster the Fourth, relative to sheriffs, was passed.

The Despensers are exiled

The kingdom was much distracted by tumults and factions; and at last, in the Parliament of Westminster, which met on July 15th, 1321, decisive proceedings were taken against the King's chief advisers, the two Despensers. The three estates were summoned, so that the absence of the clergy might not be pleaded as invalidating the acts of the Parliament. The Chronicles of Fabian and Holinshed state that the discontented lords did not at first come according to the summons, but remained

[1] The full arguments appear in Selden's *Titles of Honour*.

[2] *Parliamentary Writs*.

in London in an armed posture for fifteen days after the Parliament had begun. They held councils among themselves, and drew up a sentence against the Despensers. When the confederate lords did appear in parliament, it was in "odd party-coloured habits, yellow and green, with a white band across their breasts"; whence this parliament was called long afterwards "the Parliament of White Bands." The lords came in great military array, and had the King and Parliament completely in their power. Charges were formulated against the Despensers to the effect that they had attempted to accroach to themselves royal power, to estrange the heart of the King from his people, and to engross the sole government of the realm. As touching the younger Hugh, it was alleged that he had attempted to form a league by which the King's will should be constrained. In Edward's presence the Despensers were condemned to forfeiture and exile, never to be recalled but by the assent of prelates, earls, and barons, and that in a parliament duly summoned.

Parliament of White Bands.

Execution of Lancaster.

Edward soon took up arms, and declared the proceedings against the Despensers to be unlawful. He subdued the Mortimers, and Lancaster himself was defeated and made prisoner at the battle of Boroughbridge. He was tried in his own castle of Pontefract, before a body of peers, with the King at their head, condemned to death, and beheaded March 22nd, 1322. The Earl of Lancaster, who fell so strangely and so swiftly, was of a very contradictory character. While cruel, selfish, and treacherous in pursuit of his aims, he was yet liberal to the poor and a munificent patron of the clergy. Regarding him as a statesman, he "had never understood the crisis through which the nation was passing. His idea was to limit the royal power by a council of barons, to court the favour of clergy, and to diminish the burdens of the people; not to admit the three estates to a just share in the national government. Hence during his tenure of power few parliaments were called, and little or no legislation, except the Ordinances,

had been effected; no great national act had been undertaken; and he had not even attempted to arrest the decline of England in military strength and reputation, or to recover the ground lost by the incompetency of the king."[1]

Parliament of 1322.

One of the most important parliaments which had ever been held up to this period assembled on May 2nd, 1322. Writs of summons had been issued to the two archbishops and 19 bishops, 51 abbots, 2 priors, 2 masters, 9 earls, 72 barons, 33 of the council, and to all the sheriffs. A writ was issued to the Earl of Kent, Constable of the Castle of Dover and Warden of the Cinque Ports, commanding him to send two barons from each port. A writ was also directed to the Earl of Arundel, Justiciar of Wales, commanding him to send twenty-four of the most discreet, lawful, and able-bodied men of South Wales, with full power for themselves and for all the community; and likewise twenty-four from North Wales, with the same powers. With one exception this was the only time before the reign of Henry VIII. that representatives were summoned from Wales. The representatives of the Cinque Ports, hitherto summoned on special matters only, were now summoned for legislative purposes. The Parliament was very complete, containing the lords spiritual and temporal, the beneficed clergy, members of the council, and the commons.

The Ordinances of 1311 annulled.

The estates proceeded to the enunciation of a weighty constitutional principle. After annulling by statute the award against the Despensers, they revoked the Ordinances of 1311, as being prejudicial to the estate of the crown, and further enacted, "That for ever thereafter all ordinances made by the subjects of the king and his heirs, by any power or authority whatever, concerning the royal power of the king or his heirs, or against the estate of the crown, shall be void, and of no avail or force whatsoever; but the matters to be established for the estate of the king and his heirs, and for the estate of the realm, and of the people, shall be treated, accorded,

[1] Stubbs's *Constitutional History*.

and established in parliaments by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed." This important enactment declared the constitutional law of the realm on the subject of the legislative authority; and with regard to the distinct powers of the several persons, fixed a basis different from that in the Charter of John, though that basis was not founded on statute, but custom. This statute of 1322 is the first solemn act by which the constitution of the Legislative Assembly was distinctly described subsequent to John's Charter. The statute extended to all legislative purposes. The words respecting former custom must have applied to what had been the practice in times of internal peace and orderly government.[1] That which concerned the whole community must now be approved by all. Legislative authority was vested in the king, with the assent of the prelates, earls, barons, and commons assembled in Parliament.

Constitution of the Legislature.

New Ordinance.

In the same Parliament the King issued an ordinance, with the assent of the estates, confirming the rights of the Church as contained in the Great Charter and other statutes, and the King's peace according to law and custom; renewing the statute of 1300 touching purveyance and prises, that of 1316 affecting sheriffs, the ordinance of 1306 on the forests, and that of 1300 on the courts of the steward and marshal. The operation of the statute of Acton Burnell was relaxed, and the law touching appeals and outlawry was reformed on the exact language of the ordinances of 1311. Grants for the prosecution of the war were made.

Intrigues of Isabella.

The rest of the story of this reign is a miserable one. Queen Isabella, jealous of the power of the Despensers, intrigued with Roger Mortimer—who had become the leader of the barons—against her husband. The deserted Edward, weak-minded and vacillating, was contrasted unfavourably with his great father, and the

[1] Lords' *Report.*

people were led to believe that he was no true son of the valiant Edward I., but a changeling. In November 1326 the Despensers were taken and executed, and the King himself was made prisoner. The two Despensers, who had wrought Edward so much harm, really cared little for his interests. They desired to increase the power of the House of Commons, not from a love of constitutional government, but to counterbalance the power of the baronage. But their aim proved abortive, for while they made enemies of the barons they did not secure the goodwill of the people.

The Despensers executed.

A parliament was summoned to meet at Westminster on January 7th, 1327, for the purpose of dealing with the King. The writs were first issued by young Edward at Bristol; but after the Great Seal had been obtained from the King, new writs of more regular form were drawn up, Wales also receiving summonses, and January 7th was fixed for the day of meeting. On that day, accordingly, while the King was lying prisoner at Kenilworth, the parliament assembled. Having taken a day to consider of the deposition, Adam Orlton, Bishop of Hereford, put this memorable question on the reassembling, "Whether King Edward the father, or his son Edward, should reign over them?" There was considerable tumult, but the voice of the assembly declared unmistakably in favour of the son, and he was led into Westminster Hall and presented with loud acclamations to the people. Four bishops—Melton of York, Ross of Carlisle, Heath of Rochester, and Gravesend of London—had the boldness to protest; but Archbishop Reynolds, a primate perhaps the least worthy of that high position, declared the voice of the people to be the voice of God. Stratford, Bishop of Winchester, drew up six articles assigning the reasons why young Edward should be crowned king. First, the king was incompetent to govern, for in all his time he had been led by evil counsellors; nor would he remedy the evils complained of when he was requested by the great and wise men of his realm, or suffer them to be amended. Secondly, that he would

Deposition of Edward.

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not give himself to good counsel, nor take it, for the good government of his kingdom; but always gave himself to works and employments not convenient, neglecting the business of his realm. Thirdly, that by default of good government he had lost Scotland, Ireland, and Gascony. Fourthly, that he had destroyed the Church and imprisoned its ministers; and had imprisoned, exiled, disinherited, and put to shameful death many great and noble men of the land. Fifthly, that he had not done justice to all his subjects, as bound by his coronation oath. Sixthly, that he had done as much as possible to destroy the realm, and was himself incorrigible and without hope of amendment.

The King's renunciation.

These articles were, by common consent of Parliament, sent to the King at Kenilworth Castle. A committee was appointed to wait upon him, but when the deputation appeared, and their full errand was made known, Edward swooned away, and would have fallen to the ground but for the support of the Earl of Lancaster and the Bishop of Winchester. However, coming to himself, he answered, with tears in his eyes, that he was very sorry he had so misbehaved himself towards his people, and asked pardon for it of all that were present; but seeing now it could not be otherwise, he returned them thanks for choosing his firstborn son in his room. He then made his resignation by delivering up the royal ensigns of sovereignty, the crown and the sceptre.

Young Edward becomes king.

The commissioners returned to parliament with the King's answer and the royal ensigns, and the news made the common people rejoice. Presently the whole community of the kingdom admitted Edward, a youth of fourteen, to be their king. All this was done on January 20th, 1327, and this date is the first day of the reign of Edward III.

The right of deposition.

Edward II. was deposed by the inherent right of the people of England to put away their sovereign ruler when he had proved false to his trust. There has never been a "divine right" on the part of an English monarch to

do evil without retribution; such an absolutism, once admitted, would destroy the very basis of the constitution. The twofold right of election and deposition went together, both before and after the Conquest. But the royal power and prestige had grown so much between the time of William I. and Edward II.—fostered especially by the Church—that those who were mainly instrumental in securing the deposition of the Second Edward deemed it advisable at the same time to procure his assent to his son's election as his successor. Dr. Stubbs, in his *Constitutional History*, observes that "the constitution had no rule or real precedent for discarding a worthless king"; but surely this is incorrect: there were three actual precedents in the cases of Sigebert, Ethelred the Unready, and Hardicanute; and John and Henry III. were very nearly being deposed in the exercise of the same right. King and people being bound together in mutual compact, when a sovereign breaks his oaths and promises, the people are absolved from their allegiance. Without this mutual check kings might ruin the realm at their will.

Character of Edward II.

With regard to Edward II. personally, no one regrets his disappearance from history. His misgovernment, indolence, vindictiveness, favouritism, and neglect of his people, naturally, and very justly, led to his downfall. The subsequent fate of Edward is somewhat doubtful; but it is generally accepted that he was secretly murdered in Berkeley Castle on September 21st, 1327. Curiously enough, however, Count Nigra, who was recently Italian Ambassador in London, has discovered an inscription in the Castle of Melazzo, near Acqui, in Piedmont, which relates that Edward took refuge in that castle between the years 1330 and 1333, having providentially escaped from Berkeley Castle.

Edward III.

Edward of Carnarvon having been formally dethroned, and his son Edward of Windsor proclaimed in his stead, the latter was crowned King of England on January 29th, 1327.

The martial deeds which made the reign of Edward III.

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illustrious have been sung by poets and recounted with pride by historians. Crecy and Poitiers were brilliant victories, and they have immortalised the name of that noble and chivalrous scion of the Plantagenets, the Black Prince. Yet of permanent results which followed Edward's campaigns in France and Scotland little can be said. His war with France was not based on justice—for Edward had no real claim to the French crown through his mother—though its effects were dazzling; and while he thrice invaded Scotland he could not break the indomitable spirit of the people. Chivalry attained its perfection in the Black Prince, and the glamour of his deeds has impressed every subsequent generation. But from the people's point of view we must look for the real significance of Edward's reign in other directions. Law moved by giant strides at this period, more important laws and statutes being passed during the government of Edward III. than had been passed in all preceding reigns since the Conquest. Trial by jury also began generally to supersede other forms of trial; justices of the peace were appointed; and in all legal proceedings the use of the English language was substituted for that of French. A great development in the fine arts was witnessed, especially in architecture, as exemplified in the building of Windsor Castle. Froissart as a chronicler, Chaucer and Gower as poets, and last, but not least, Wycliffe as the translator of the Bible and the herald of the Protestant Reformation, all shed lustre upon this and the succeeding reign.

Important statutes passed.

Constitutional progress.

Constitutional progress under Edward was especially great and rapid. The knights of the shire, who had previously acted with the barons, joined the citizens and burgesses, and in the first parliament of Edward III. they were found sitting together as "the Commons." This may be taken as the turning-point in the political history of England. The union of the country gentlemen with the burgesses formed an estate of the realm which was destined to prevail over all other powers. The withdrawal of the clergy further strengthened the united commons.

Parliament gained in authority by the very necessities of the King. As Edward was continually in difficulties, he was also continually in need of subsidies, and this meant the calling together of parliament, which ultimately occurred every year. The sovereign leaned upon the commons for advice in questions of peace and war, and always entertained their petitions for the redress of grievances. By-and-by the advice and consent of the commons, as well as that of the lords spiritual and temporal, came to be regularly recorded in the enacting part of every statute.

King and parliament.

Tracing now the parliamentary history of the reign of Edward III., it began with the administration of Isabella and Mortimer, who had the Bishop of Ely as chancellor, and Bishop Orlton as treasurer. Young Edward met the parliament, which was not a new one, but the old one continued, on February 3rd. A standing council was appointed for the King, consisting of four bishops, four earls, and six barons, of whom one bishop, one earl, and two barons were to be in constant attendance. The proceedings against Thomas, Earl of Lancaster, were reversed, and his successor, Henry, held the first place amongst the new king's advisers. The condemnation of the Despensers was confirmed. By statute the King confirmed the charters, and renounced the right of seizing the temporalities of the bishops. Edward next forbade the abuse of royal power in compelling military service, in the exaction of debts due to the Crown, and of aids unfairly assessed. He also confirmed the liberties of the boroughs, and reconstituted the office of Conservator of the Peace.

Royal council appointed.

A parliament held at Lincoln in September granted an aid of a twentieth to defray the expenses of the abortive Scotch war. On January 14th, 1328, Edward married Philippa of Hainault, and in the following March peace was concluded with Scotland by the marriage of the heir of Robert Bruce with the King's sister, and the formal renunciation by Edward of his claims over Scotland. Meanwhile Queen Isabella and Mortimer became very unpopular, and the Earl of Lancaster, who had

Progress of events.

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simply been used as a tool by Isabella's party, endeavoured to form a confederacy for the overthrow of Mortimer. Being for the time unfortunate, however, he made terms with his enemy. But the Earl of Kent, younger brother of Edward II., did not fare so easily. Being persuaded that his brother was still alive, he was drawn into a plot which Mortimer regarded as treasonable, and being brought to trial in a parliament which met at Winchester, March 11th, 1330, he was condemned and executed.

Trial of Mortimer.

Lancaster saw whither matters were tending, and that the king must be enlightened as to the true character of Mortimer. This was done so effectually that Edward, who was already weary of the haughty insolence of the queen dowager's paramour, arrested Mortimer at Nottingham, and conveyed him to London. He was put on trial before the lords, the charges against him being that he had set aside the Council of Regency, was guilty of the murder of Edward II., had used violence in the parliament at Salisbury and led the King against the Earl of Lancaster as an enemy, had conspired for the death of the Earl of Kent, had procured gifts of crown lands, had contrived to raise a force illegally, had summoned service for Gascony, caused discord between the king and queen, had taken the King's treasure, had appropriated £20,000 paid by the Scots, had acted as if he were king, had exercised cruelties in Ireland, and had intended to destroy the King's friends. Mortimer was condemned without a hearing, and executed; Isabella was compelled to surrender her vast possessions; and the chief ministers were changed.

Annual parliaments.

In this same parliament, which was held at Westminster November-December 1330, keepers of the peace were appointed with new provisions; the law of 28 Edward I. on purveyance was re-enacted; annual parliaments were ordered to be held; and the Statute of Lincoln of Edward II., respecting the qualification of sheriffs, was renewed.

Packing the commons.

The practice of packing parliaments appears to have been very early in vogue. In connection with this

November parliament of 1330, a very singular writ was sent to all the sheriffs, in which "the evil designs of the late minister" in "packing" parliaments were openly declared. The writ showed that the practice had a much earlier date than either the fourteenth or thirteenth century.

The Sovereign and Parliament.

Edward III. manifested considerable trust in the parliamentary institutions, and their action became more clearly defined in his reign. There was less friction between the sovereign and parliament than in previous reigns. When Edward consulted it, moreover, in 1331, as to his quarrel with France, and in 1332 as to the proposed crusade, not only were the magnates referred to for counsel, but knights of the shire are specially mentioned as deliberating apart on these and other questions. Finally, at this period parliament was divided into two houses, such as exist at the present day. In the September parliament of 1332, the earls, barons, and other magnates sat together; the prelates by themselves; and the knights of the shire by themselves: but the year 1341 marks the clear division of the Lords and Commons into two houses.

Separation of the Houses.

Scotland.

Parliaments were frequent between 1333 and 1338, and grants were made to the King for his Scottish and French wars, which here demand attention. In 1332 Edward assisted Baliol in his efforts to crush the Bruce dynasty, and in the following year he invaded Scotland, inflicting a severe defeat upon the Scots at Halidon Hill. The south of Scotland was reduced, and Baliol proclaimed king of the portion beyond the Forth. But Baliol was subsequently driven from the country, whereupon in 1336 Edward again led an expedition into Scotland, which ravaged all the south-east of the country.

War with France.

Meanwhile, a complete rupture occurred with France, mainly arising out of the disputes between Philip of Valois and the Flemings, the interruption to the Anglo-Flemish trade, and the aggression of Philip on Aquitaine. Edward crossed over into Flanders, and in 1340 the English fleet, commanded by the King, won a great naval battle over the French at Sluys, after which the army landed

and laid siege to Tournay. A truce being concluded for nine months, Edward returned to England.

Large money grants.

In these campaigns the King had the sympathy of the nation, and Parliament made large grants of money. In sessions held at Westminster in March 1336, and at Nottingham in the following September, two-fifteenths were successively granted from the barons and knights, and two-tenths from the towns ; the clergy also voted two-tenths. The barons and knights gave a fifteenth in 1337, likewise the towns, and the clergy a tenth for three years. The imposts on wool were most important, and Edward adopted his grandfather's practice of dealing with the merchants collectively apart from the Parliament, and representative merchants were summoned to wait upon the council ; London and twenty-one other cities sent four each to Oxford in May 1336 ; in June one hundred and five were summoned to Northampton, and in September thirty-seven merchants met the parliament at Nottingham. The customs on wool were increased, the monopolies extended, and the privileges of trade enlarged. Merchants were frequently called upon for advice as financiers. In September 1336 a custom of forty shillings was granted on the sack of wool exported by denizens, and three pounds from aliens ; a statute of 1337 forbade the importation of foreign cloth and the exportation of wool, preparatory to the imposition of an additional custom ; but it permitted foreign workmen to settle in the country, and offered them special advantages. "In 1338 the Parliament gave the King half the wool of the realm, amounting to 20,000 sacks ; and in 1339 the vote of the barons took the form of the tenth sheaf, the tenth fleece, and the tenth lamb : in 1340 the commons offered an aid of 30,000 sacks of wool. At a later period the same influence appears in the revival and regulation of the staples."[1]

Conditional aids.

But the parliament of October 1339 made conditions before granting money. While allowing that a grant

[1] Stubbs's *Constitutional History*, the *Statutes*, Rymer's *Fœdera*, etc.

was necessary, the magnates expressed a wish that the additional customs imposed in 1336 and 1337 might cease, that the guardianship of tenants-in-chief might be given to the next blood-relation, and that measures might be taken to prevent the mesne lords from being cheated of their rights of wardship. The commons even went farther, and doubted whether they could grant an aid without consulting their constituents ; and they prayed that two knights girt with swords might be summoned from each shire to the next parliament to represent the commons, and that no sheriff or other royal officer should be eligible. Six points were put forward requiring redress, one concerning the maletote or additional customs, and others touching the grant of amnesty for offences, arrears of debts and fines, and a release from the customary aids and prises. Meantime, the members promised to do the best they could with their constituents, and the demand for a fresh election was acceded to.

Parliament of 1340.

The new parliament met on January 20th, 1340, and sat from that date to February 19th ; from March 29th and April 19th to May 10th ; and from July 12th to July 26th ; each time at Westminster. The earls and barons granted for themselves and for their peers, who held by barony, the tenth sheaf, fleece, and lamb of all their demesne lands. The commons offered an aid of 30,000 sacks of wool on condition of the king's acceptance of a schedule of articles ; and subsequently they vouched for 2500 sacks of wool, whereon to borrow money, which would be a gift if their conditions were rejected, but otherwise part of the larger amount. The King returned to England to consider the articles of complaint, and met the parliament and the merchants on March 29th. The result was that instead of a tenth, the ninth sheaf, fleece, and lamb were granted by the magnates and knights of the shire for two years ; the towns granted a ninth of goods, and the rest of the population a fifteenth ; in addition, a custom of forty shillings was granted on each sack of wool, on each

three hundred woolfells, and every last of leather. The King accepted the petitions of the commons, and ordered them to be referred to a committee of judges, prelates, and barons, to whom were added twelve knights and six citizens and burgesses chosen by the commons.

Important statutes.

Four important statutes of the fourteenth year of Edward III. were the outcome of the petitions. The first statute established the points demanded in 1339, abolished presentment of Englishry, forbade the sheriffs to continue more than one year in office, and restored the appointment to the Exchequer, thus reversing an order for the election of sheriffs in the county court which had been issued in 1338-9. It further endeavoured to remedy the evils of the decaying local jurisdictions, the hundred and wapentake courts which were let at farm or held in fee; it limited the abuses of purveyance, and extended the functions of the judges at *nisi prius*. The second statute was still more important, for it abolished the royal right of tallage, enacting that henceforth no charge or aid should be made but by the common assent of the prelates, earls, barons, and other great men, and the commons of England, and that in parliament. This act was the real act *De Tallagio*, and not the earlier statute of 1297, which left a loophole for Edward I. to tax demesne lands. The act of 1340 may be regarded as the supplement to the confirmation of the charters. The third statute of 1340 declared that the assumption of the title of King of France should never be held to imply the subjection of the English to the French crown; and the fourth defended the clergy against the abuses of purveyance, of the royal right of presentation to livings belonging to vacant sees and wards of the crown, and of waste during vacancies.

Ministerial changes.

A great ministerial crisis arose at this period. The government was in the hands of the two Stratfords—John, Archbishop of Canterbury, and Robert, Bishop of Chichester. The two brothers had held the Great Seal alternately, with two brief interruptions, since the fall of Mortimer and the dismissal of Bishop Burghersh.

Politically, the archbishop was head of the Lancastrian or constitutional party, Burghersh and Orlton being identified with the court party. John Stratford was chancellor in 1330, again in 1335-7, and for a third brief period in 1340, when he was succeeded by his brother. He was a faithful minister to Edward, but he found it impossible to raise sufficient money to defray the expense of the costly French wars. In 1340 the King, angered by his want of money and the ill success of the expedition, turned round and accused the Archbishop of malversation. The Chancellor and the Treasurer, Bishop Northburgh of Lichfield, were removed from office. Willoughby, ex-Chief Justice of the King's Bench, Stonor, Chief Justice of the Common Pleas, Shareshull, a judge of the same court, together with the chief clerks of the chancery ; Lord Wake, and a number of the most eminent merchants, including William and Richard de la Pole, were arrested and imprisoned. The Archbishop took sanctuary in his palace at Canterbury, and a fierce controversy ensued.

Quarrel between Edward and Stratford.

The struggle between the King and the Archbishop is extremely interesting from the constitutional aspect, as it incidentally established the principle that a peer could only be tried by the House of Lords. Edward summoned Stratford to court, but he declined to attend, and compared himself to Becket the martyr, justifying the comparison by a series of excommunications against the breakers of the Great Charter. He further forbade the clergy to pay the ninth sheaf, and in a letter to the King, dated January 1341, he commented on the unwarranted and illegal arrests, pointed him to the example of his father, threatened him with the fate of Rehoboam, and appealed to the judgment of his peers. The King replied in a very unjust and disingenuous pamphlet styled a *libellus famosus*. He sought to fix upon the Archbishop the responsibility for the failure of the expedition, because he had kept him without the money voted by parliament. Stratford replied by showing that he was not responsible for the king's pecuniary difficulties, and

that he was ready to make answer before the King, the prelates, lords, and peers, to every charge brought against him. The King rejoined in another inconclusive letter. Bishop Burghersh died during the controversy. In December 1340 Edward had entrusted the Great Seal to Sir Robert Bourchier—the first layman who had filled the office of chancellor.

The trial of peers.

Parliament met on April 23rd, 1341 ; and when Archbishop Stratford endeavoured to enter Westminster Hall, he was ordered by the King's chamberlain, Sir John Darcy, and the steward, Lord Stafford, to repair to the Court of Exchequer to hear the charges made against him. He did so, and, having demanded time for deliberation, proceeded to the Painted Chamber, where he informed the few bishops then present that he intended to clear himself in full parliament. Edward shrank from meeting him. So matters remained until May 3rd, when a committee of twelve lords was chosen to advise the king on the general question whether the peers were liable to be tried out of parliament. The committee reported that on no account should peers, whether ministers or not, be brought to trial, lose their possessions, be arrested, imprisoned, outlawed, or forfeited, or be bound to answer or be judged, except in full parliament, and before their peers. This was a victory for the Archbishop, and Edward gave way.

Constitutional demands.

But as a consequence of Stratford's determined constitutional attitude, parliament proceeded to take an equally firm stand. The lords demanded a statute confirming the privilege of trial by their peers ; the clergy asked for exemption from the jurisdiction of the lay courts, for the confirmation and observance of the charters, the release of imprisoned clerks, and the restriction of the functions of justices of the peace ; while the commons demanded the enforcement of the charters ; the imposition of an oath on the judges and officers of state that they would keep the laws, the Great Charter, and other statutes ; and the release of old debts due to the Crown. The lords and commons further jointly

demanded that commissioners should be appointed to audit the accounts of officers who had received money on the King's behalf; that an ordinance issued at Northampton for the arrest of reputed criminals, which had been oppressively used, should be annulled; that the chancellor and other great officers should be appointed by the king in parliament, and sworn to obey the law; and that the statute passed when the ninth sheaf was granted should be held good in every point. The King consented to confirm the privilege of the peers, expressed the best intentions towards the clergy, and accorded the petition of the commons. The examination of accounts and the nomination of ministers were granted without question; it was agreed that Parliament should elect the auditors; counsel should be taken upon every ministerial vacancy, and at each parliament; ministers should resign their offices into the king's hands, and be compelled to answer all complaints.

Evasion of the King.

It was a great constitutional point for parliament to achieve to make ministers accountable to the nation, thus securing an indirect check upon the king; but unfortunately Edward annulled the statutes in which he had enshrined his promises. This was done by letters patent on October 1st, 1341, the King pleading the consent of certain earls, barons, and others that acts done in prejudice of his royal prerogative were null: therefore, while he was quite willing to observe all engagements made with his people by his predecessors, these statutes he revoked.

Parliament of 1343.

Parliament did not meet again until April 28th, 1343, when the lords spiritual and temporal met in one house and the representative members in another. The lords assembled in the White Chamber, and the commons in the Painted Chamber. After consultation apart, the commons went to the White Chamber and made answer by Sir William Trussel. The King created his eldest son Prince of Wales; but Parliament seems to have done little beyond formally repealing the statutes which

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Edward had revoked in 1341, and approving the truce which he had made for three years with the French. The commons, however, presented a list of grievances in thirty-five articles, which included "not only the usual formal requests for the maintenance of the charters and newer statutes, but a petition for the identical remedies provided in 1341, a remonstrance against a grant of forty shillings on the sack made by the merchants without the consent of the commons, a prayer that statutes made by the lords and commons might not be repealed or defeated, and that the chancellor and justices might be chosen from among the peers or wise men of the realm."[1] There was also a protest against royal extravagance; but both lords and commons petitioned strongly against papal interference with ecclesiastical patronage, which had recently vastly increased. Three brief articles on the reform and regulation of the coinage represented all the legislation incorporated in the statute law. In this parliament the proceedings which had been taken against Stratford in 1341 were annulled.

The Commons as advisers.

While at first the function of the commons was limited to making grants to the king, in 1343 they were asked by the sovereign to advise how justice was to be administered, and they gave their advice at length, recommending that justices be elected and sworn in parliament.[2] A few years later they were asked to give their opinion on the war with France; but after four days' deliberation, *ses pauvres communes*, as they called themselves, returned for answer to their very honourable and redoubtable lord that they were too ignorant and too simple to have any opinion, but prayed the King and his nobles to do what they thought best for the honour and profit of the kingdom. From this time forward the records of their advice being required in affairs of State are frequent, and what was practically a debate on the Address—that is, a consideration of the causes given in the royal speech for

Debates on the Address.

[1] Stubbs's *Constitutional History*.

[2] Rot. Par., II. 136.

summoning parliament—became very nearly a regular preliminary, sometimes extending over two or three days. While there is no credible report of the actual debate, summaries of the answers given by the speaker or chairman, either to the peers or to the sovereign in person, indicate the result of their deliberations.

Grievances, supplies, and petitions.

The cardinal doctrine that grievance precedes supply, was, as we have seen, gradually established. In 1339 the commons attached certain conditions to their grants,[1] which were to be put into an indenture, and in case the conditions were not fulfilled the commons would not hold themselves bound to make the aid. In 1340 they obtain that such of their petitions as relate to matters of permanent interest shall be put in the form of a statute, and those which are only of temporary interest in Letters Patent,[2] and sent round to the cities, counties, and boroughs, and soon afterwards they demand that their petitions shall be speedily answered—that they shall be confirmed and sealed before the dissolution, and that the answers to their petitions shall be engrossed in their presence. Frequent complaints arise that the enrolled statute does not conform to the answer given by the King, and in 1348 they declare that they will disavow any bill[3] which shall tend to alter the answers given to their petitions in this last-mentioned parliament. It was also in Edward III.'s reign that the commons first responded in the primitive form of "oui" or "aye," when the King's chamberlain asked them whether they agreed to the treaty of peace with France."[4]

Events at home and abroad.

Returning to the historical thread of our narrative, on August 6th, 1346, the English gained the great victory of Crecy. Calais was next captured; but Edward was almost as bankrupt in resources as his enemies. Meantime many deaths and ministerial changes occurred

[1] Rot. Par., II. 107. [2] *Ib.* 113. [3] *Ib.* 203.

[4] The earliest recorded instance where the royal assent to a measure was signified by the formula *Le Roi le veut* belongs to the year 1377, in Richard II.'s reign.

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at home. Sir Robert Bourchier had resigned the Great Seal in 1341, and after being succeeded by two lay chancellors, Parning and Saddington, John Ufford, Dean of Lincoln, was appointed to the office. In 1345 the Treasury was given to William of Edington, who became Bishop of Winchester in 1346. Henry of Lancaster and Bishop Orlton died in 1345, and Stratford in 1348.

Parliamentary grants.

A parliament met in 1344, when the commons granted two-fifteenths from the shires and two-tenths from the towns, so as to guarantee a supply for two years. The clergy granted a tenth for three years, and the lords agreed to follow the King to the war. The grant by the clergy was made in convocation, and reported to the King by the parliamentary proctors, which was now the usual course ; but this is the first instance in which such a grant was entered on the rolls of parliament, and stated in a statute. Further parliamentary grants were made in 1346 for two years, and in 1348 and 1351 for three years. The King also obtained from time to time free gifts of wool from the merchants. The knighting of the Prince of Wales was made the occasion for a feudal aid in 1346. This aid, which was contrary to the statute of 1340, was collected at double the amount fixed by the Statute of Westminster, and levied without the consent of the commons. In 1344 the counties complained of the burdens laid upon them by the commissions of array, and in 1346 the King's right to issue such commissions without the assent of parliament was questioned. The commons at this time became jealous of the clergy, who, before granting aids, made conditions, and obtained the statute which provided that prelates should be exempt from trial by the justices in criminal cases, as well as the abolition of other checks upon ecclesiastical privileges.

Difficulties as to aids.

By the year 1347 it was quite apparent that Edward's promises to deal fairly with his people in the matter of taxation could not be relied upon. On March 3rd in that year the regent held a council—in which the commons were not represented—when a loan of 20,000 sacks of wool was negotiated, and separate promises of aid made,

while the merchants soon afterwards agreed to increase the customs on wool, wine, and merchandise. In the January parliament of 1348, the commons, growing alarmed, began to evade responsibility for the war, and at the same time presented petitions for the redress of grievances. Complaints were made of the commissions of array, the monopolies of wool and tin, the unauthorised impost on manufactured cloth, and the illegal increase of the customs. The King made unsatisfactory answers; and in the following March, when the King asked for money, the commons emphatically renewed their complaints. Nevertheless, grants of a fifteenth and a tenth for three years were made—on condition that the money should not be turned into wool; that the proceedings of the itinerant justices should be stopped; that the subsidy on wool should cease in three years, and not be again granted by the merchants; that no impost, tallage, or charge should be laid on the commons by the Privy Council without their assent in parliament; that the 20,000 sacks should be restored; that no aid should be taken for the marriage of the King's daughter; and that when these petitions were answered the answers should remain on record and in force without change. The King, in accepting the grant, agreed to most of the conditions, though no new statute was founded upon them.

The Plague.

The terrible plague which began in 1349, and ravaged England for three years, completely paralysed public business. Edward founded the Order of the Garter at this period, and was requested to accept the imperial crown, but these events were overshadowed by the condition of Europe. The population in England greatly diminished, and it was with the utmost difficulty that landowners could get their estates cultivated. The system of agricultural management was entirely changed, and the modern custom of letting was introduced, thus establishing the permanent distinction between the farmer and the labourer. The Statutes of Labourers were enacted in 1349, in consequence of the dearth of agricultural workers. The labourers demanded an immediate

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and a considerable rise in wages, and to check this two statutes were passed forbidding the men to receive or the masters to offer higher wages than before the Black Death. Labourers were to be compelled to work, and were forbidden to leave their employment without agreeing with their masters. These statutes were re-enacted in 1357, 1361, 1368, and 1376; but they proved nugatory, and only increased the ill-feeling between masters and men, as well as the social difficulties which, as we shall see, culminated in the revolt of 1381.

Statutes of Labourers.

The King and the Commons.

The relations between the King and the commons were not satisfactory from the constitutional point of view. While the commons frequently asserted their rights, Edward managed to evade or to override them. He revoked a whole series of statutes, and in the matter of taxation the popular representatives could do nothing. The clergy increased in power, and monopolised nearly all the great offices of state; while the masses of the people, who were not yet in the enjoyment of their full political rights, were little more than beasts of burden. The system of royal purveyance was very oppressive, and took such a wide range that "every old woman trembled for her poultry, and the archbishop in his palace trembled for his household and stud, until the King had gone by."[1] There thus sprang up an estrangement between Edward and his people, and from 1350 onwards until this sovereign's death there was anything but a popular king and a contented people.

Frequent Parliaments.

After the subsidence of the plague, the estates met frequently, but as the rolls of parliament from 1356 to 1362 were lost, information as to the business of the houses during this period is very limited.

The French war.

The war with France was temporarily concluded in 1360 by the Peace of Bretigny, under which England obtained Gascony, Guienne, Poitou, and other districts, together with a sum of three million gold crowns as ransom for the French king. But the treaty was

[1] Letter of Archbishop Islip to Edward III.

not carried out, and the war continued, at first in Brittany, and afterwards in the south, where Aquitaine and Guienne were gradually recovered by the French, so that at the close of Edward's reign scarcely anything remained of all his conquests save Calais and Bordeaux.

Ordinances and Statutes.

A state of friction arose at this period between the commons and the royal council. The King still wished to assume to the crown, acting with the assistance of the council, the power of legislating by ordinance; but the commons demanded that Orders in Council should acquire only the force of statute law by the sanction of parliament, so establishing the difference between an ordinance and a statute. Thus, in the parliament of 1354, it was decided that certain ordinances and agreements passed in council should be made a perpetual statute, and as such they were entered on the Statute Roll. The number of general councils increased at this time.

Provisors.

The statutes relating to Provisors, Præmunire, and Treason were among the most important legislative acts of the reign of Edward III. The first Statute of Provisors, passed in February 1351, was aimed at the Pope for giving away Church benefices in England to men of his choice, and often to aliens. The first Statute of Præmunire, passed in 1353, declared the forfeiture and outlawry of those who sued in foreign courts for matters cognisable in the king's courts. It is worthy of note that the clergy are not mentioned as petitioning for this statute or assenting to it; and also that, although the measure was plainly levelled against the pretensions of Rome, its real aim was nowhere stated in the body of the act. The Statute of Treasons, passed in 1352, was the first law that authoritatively defined the crime of treason and its penalty. Treason hitherto had a wide signification, but henceforward no man was to be held guilty of the crime who had not compassed the death of the king, queen, or their eldest son; violated the queen, the king's eldest daughter if unmarried, or the wife of his eldest son; levied war against the king in his kingdom, or adhered to his enemies; counterfeited the great seal,

Præmunire.

Treason.

or brought false money into the land; or slain his chancellor, treasurer, or judges, "being in their place doing their offices." All the lands forfeited for any of these offences were to go to the king, whether holden of him or of others. The principal clauses of this statute remain the law unto this day.

The Staples.

Another important law passed was the Statute of the Staples. Staples or marts for the sale of the chief commodities of England—wool, woolfells, leather, lead, and tin—were established in various places by Edward I. and Edward II. The system began in the reign of the first Edward, who bought the town of Antwerp from the Duke of Brabant, and established there the foreign centre for the wool trade. The foreign staple was afterwards fixed at St. Omer; and when he took Calais a staple was set up there, which, on the loss of Calais in 1558, was moved to Bruges. In England there were staples at several of the principal towns, including, London, York, Bristol, Newcastle, Lincoln, Exeter, and Winchester. After several changes, Edward III. established the staple system by statute, the act being passed by the parliament of 1354. In this statute the staple towns were enumerated—Dublin, Cork, Waterford, and Drogheda being fixed on for Ireland, and Carmarthen for Wales; the ancient customs payable on staple goods were recited; all merchants, save merchants of the staple, were forbidden to buy or export these goods; and arrangements were made for the government of each staple by its own mayor and constables. The appointment of staple towns was a measure of considerable importance commercially, socially, and politically. It facilitated the collection of the customs, and constitutionally it bore on the relative rights of the crown and the parliament as regarded taxation. The merchants possessed exclusive privileges, and were under the special protection of the crown, and the king negotiated with them separately, as a body, apart from the estates of the realm. Parliament looked on the royal dealings with the merchants as infringements of its rights; and the authority given by the statute to

the ordinances of the staple previously made by the council, and the recital of the ancient customs, may be regarded as assertions of the privileges of the estates.

Peace grants.

The supplies granted during the years of peace were liberal. In 1362 there was a grant of twenty shillings on the sack and 300 woolfells, and forty shillings on the last of leather; in 1365 subsidies of double the amount were granted, the extra amount being required for the pacification of Ireland and Gascony; and in 1368 the wants of the two succeeding years were met by a vote of 36*s.* 8*d.* on the sack and twelve score woolfells, and four pounds on the last of leather. Edward was well served by his ministers, who were chiefly prelates, and distinguished for their love of learning, their benefactions, and general good government. Conspicuous amongst them were Thoresby, Archbishop of York; Edington, Bishop of Winchester; William of Wykeham; and Islip, Archbishop of Canterbury.

Acts of legislation.

Legislation made important strides at this period. Sumptuary laws were passed to prevent the further impoverishment of the country after the plague and the war. In 1362 it was enacted that no subsidy should henceforth be set on wool without the consent of parliament, while purveyance was abolished, except in the case of the king and queen. Anti-papal legislation marked the sessions of 1365-6. A new statute of præmunire was passed forbidding the jurisdiction of the papal court; and the bishops, lords, and commons united in repudiating the burden of papal superiority which had been undertaken by John, and refused to pay the tribute of 1000 marks, which had been long in arrear and now ceased altogether. Even Peter's pence, dating from the time of Offa, was withheld for a time. The use of the English language was now in vogue, it having been ordered in the courts of law in 1362, and adopted by the Chancellor in his speech on opening parliament in 1363.

John of Gaunt.

John of Gaunt, Duke of Lancaster, now acquired great influence over his father, and at one time he was suspected of aspiring to the succession. Queen Philippa

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died in 1369, and henceforth Edward's life was miserable and unhappy.

Parliaments of 1369 and 1371.

Yet the parliament of 1369 was marked by unanimity of feeling. The sovereign was advised to resume the title of King of France; an increased custom on wool was granted for three years; and the clergy supplemented this with a tenth for the same period. The parliament of 1371 met at Westminster on February 24th, the king being present, with Wykeham as chancellor and Bishop Brantingham of Exeter as treasurer. The Chancellor set forth the King's great needs in consequence of the enormous preparations made by the king of France. The lords and commons presented a formal address to the King, praying for the removal of the clerical ministers, on the ground that it was impossible to bring them to account when they wrought mischief. The King consented, and Wykeham was succeeded as chancellor by Sir Robert Thorpe, Master of Pembroke Hall, Cambridge; and Bishop Brantingham was followed at the treasury by Sir Richard le Scrope, the faithful counsellor of John of Gaunt. It was agreed that in future the chancellor, treasurer, and keeper of the privy seal should be laymen. As a result of the King's concession, both houses agreed to a subsidy of £50,000, to be levied on every parish, at 22*s.* 3*d.* the average. The clergy granted a separate aid of £50,000. One statute only was passed by this parliament, which reiterated the law of 1362 ordaining that no impost should be laid on wool without the assent of parliament.

The parishes.

Ministers made strange miscalculations with regard to the contributions from the parishes, and a great council was held at Winchester on June 8th to remedy their errors. Certificates were produced showing that the number of parishes in England would not answer to the tax of £50,000 granted by the parliament. Instead of there being 40,000 parishes there were less than 9000; the charge of 22*s.* 3*d.* was therefore raised to 116*s.*, and even then all the Church lands acquired since 1292 were included among the contributories.

Parliaments of 1372 and

In the parliament of 1372, which met for the despatch of business on November 3rd, Sir Guy Brian, on behalf of the king, explained his majesty's necessities, which were as usual great. The war in Aquitaine had proved very costly, and liberal taxation must be submitted to. Accordingly, the heavy subsidy imposed on wool in 1369 was renewed for two years, a fifteenth was granted for a single year, and the citizens and burghers, after the knights had left, continued for another year the custom of tunnage and poundage, two shillings on the tun of wine, and sixpence on the pound of merchandise. This impost had been granted the year before for the protection of the merchant navy. The Prince of Wales negotiated the impost on wine and merchandise, adopting the unconstitutional mode which had been forbidden in the case of the wool. Numerous petitions were presented in this parliament, but only one of them took the shape of a statute, and that was against the lawyers. It enacted that no lawyer practising in the king's courts, nor sheriff while in office, should henceforth be eligible as a knight of the shire, and that those now returned should not have any wages. Lawyers simply made a convenience of parliament, attending to the business of their clients to the detriment of public business.

1373.

The parliament of 1373, which assembled on November 21st, was called in consequence of the ill success of John of Gaunt's French expedition. The Duke of Lancaster had gone through a considerable portion of the French territory without meeting an enemy, while his own supplies failed, and he lost a great part of his army. Sir John Knyvet, the chancellor, declared the cause of summons, and in his opening speech urged that "the lords and others who had ventured their lives and fortunes to defend them from their enemies, ought to be well refreshed and comforted with force and aid, and that with as much speed as possible." He also peremptorily intimated that all petitions must stand over until this was done.

For the first time in the history of our representative

parliaments a conference was now held between the lords and commons. The latter had requested the lords to appoint a number of their body to confer with them, and in response to their application the lords deputed the Bishops of London, Winchester, and Bath; the Earls of Arundel, March, and Salisbury, Sir Guy Brian and Sir Henry le Scrope—most of whom were antagonistic to John of Gaunt. The commons, after consultation, agreed to a grant of a fifteenth for two years, provided the war should last so long; sanctioned the renewal of the subsidy on wool, and tunnage and poundage, for the same period; but stipulated that no members of parliament should be collectors of the tax.

Conference between the Houses.

Popular discontent.

Futile negotiations subsequently took place at Bruges for a concordat with the Pope, and there was much disaffection in consequence. This was increased by the King's infatuation for his mistress, Alice Perrers, who was supported in her corrupt and arbitrary conduct by the Duke of Lancaster. The non-summoning of parliament added to the general discontent, and the popular excitement found expression in the memorable parliament of 1376.

The "Good Parliament."

This parliament is known in history as the "Good Parliament." It was summoned for February 12th, but did not actually meet until April 28th. On the 29th, in the presence of the King, Knyvet, the chancellor, declared the occasion of meeting, which was threefold —viz., to provide for the internal peace of the country, for defence against France, and for the continuance of the war. Twelve magnates were appointed to confer with the commons. The real strength of the latter centred in the Prince of Wales, who warmly approved their determination to redress abuses. The commons elected as their spokesman Sir Peter de la Mare, one of the knights who represented Herefordshire, and who was steward to the Earl of March. Though not technically the first Speaker of the House of Commons, he practically acted as such. De la Mare at once demanded that the national accounts should be audited,

and that trustworthy counsellors and ministers should be appointed.

Impeachment of Latimer and others.

The commons next proceeded to accuse Lord Latimer, Richard Lyons, and others of malversation and fraud. This is the first instance of impeachment on record. Latimer, who was the King's chamberlain and a privy councillor, had been guilty of all kinds of malversation: he had bought up the King's debts, extorted enormous sums from the Bretons, sold the castle of St. Sauveur to the enemy, prevented the succour of Becherel, and intercepted fines which should have been paid into the royal treasury. Lyons, the King's agent with the merchants, had been Latimer's partner in several gigantic financial frauds. They were formally impeached by parliament and condemned to imprisonment and forfeiture. Latimer's trial was by his peers; but although he was convicted and sentenced, he was released on bail, and ultimately evaded justice. Under cover of a general order that no woman should henceforth interfere with the administration of justice, the commons next obtained an award of banishment and forfeiture against Alice Perrers.

Death of the Black Prince.

While the reforming zeal of parliament was at its height, the Black Prince died on June 8th, to the great grief of his father and the consternation of the people. The commons demanded that his son Richard should be brought before them, so that they might view the heir to the throne, and thus overthrow the supposed machinations of John of Gaunt. This was done, and an administrative council was appointed with the consent of the King.

Petitions.

No fewer than a hundred and forty petitions on various subjects were presented to the King, the most important of which prayed that parliaments might be held annually; that the knights of the shire should be freely elected, not merely nominated by the sheriff; that the sheriffs should be elected, and not appointed at the exchequer; that the law courts should be reformed; that the statute of labourers should be enforced; and that the abuse of papal provisions, etc., should be removed. The petitions proved nugatory, not a single statute being founded upon them.

Reactionary measures.

John of Gaunt set the estates at defiance, now that the Black Prince was gone, and all the work of the Good Parliament was speedily undone. Alice Perrers was recalled; Lyons and other offenders were pardoned; Peter de la Mare was sent to prison; William of Wykeham was banished from court; and the new members of the council were dismissed. The temporalities of the see of Winchester were given to the heir apparent as a bribe, and the King was prevailed upon to make his will, naming Lancaster and Latimer among his executors. But, notwithstanding these reactionary measures, the year 1376 forms an interesting and important epoch in the history of parliament. It was something to get a clear enunciation upon the responsibility of ministers, and the rights of impeachment and of inquiry into grievances and abuses; and these were destined to receive significant corroboration in the succeeding reign.

Edward's last Parliament.

Amid circumstances of national solicitude, the last parliament of Edward III. met at Westminster on January 27th, 1377. It was opened by the new chancellor, Dr. Adam Houghton, Bishop of St. David's, who delivered a long harangue. As the King had completed the fiftieth year of his reign, and had made his grandson Prince of Wales, such joyous events "called for fervent charity and liberal offerings"; but the real application of the discourse was the pressing need of a grant of money to continue the war which France was preparing to renew. The commons repaired to the Chapter House, and at their request a committee of lords was appointed to advise with them, consisting of the Bishops of Lincoln, Chichester, Hereford, and Salisbury; the Earls of Warwick, Arundel, Salisbury, and Stafford; and Lords Percy, Ross, Fitzwalter, and Basset. Most of these were personal friends of John of Gaunt, and the Duke's steward, Sir Thomas Hungerford, was chosen

The first Speaker.

Speaker of the House of Commons. Hungerford, who was one of the knights of the shire for Wilts, was the first speaker to whom the title was definitely given.

The knights endeavoured to procure the liberation of

Peter de la Mare, but Lancaster circumvented them by securing a majority of votes. He also procured the passing of petitions for the restoration of Lord Latimer, Alice Perrers, and others who had been impeached in the Good Parliament. Meanwhile, convocation was occupied with the wrongs of William of Wykeham. Courtenay, dean of the province, urged the clergy to give nothing until the Bishop of Winchester was restored to his rights. Archbishop Sudbury consulted the King, who gave a general promise of redress, and Wykeham was permitted to take his seat. An attempt was next made to prosecute Wycliffe, but this failed for the time.

Lancaster's policy.

After consultation, the lords and commons granted an aid of fourpence from every person in the kingdom, male and female, above fourteen years of age, except mere beggars. They humbly prayed to be excused, "that they were not able at present to pay more." The clergy also agreed to a poll-tax, on seculars and regulars alike, in the same proportion. They presented petitions for the redress of grievances, but they were of little avail, and the work of the Good Parliament was completely nullified.

Aids and grievances.

Parliament was dissolved on March 2nd, and on the morning of June 21st, 1377, Edward III. died, in the sixty-fifth year of his age. This monarch's reign was one of great territorial losses. But it was also one of undoubted importance from the constitutional, social, literary, and religious points of view. We are only concerned with it in its legislative aspect. "The reign of Edward III. was a reign of frequent parliaments and of much legislation, but Edward could no more be compared to his grandfather as a legislator than he could as a statesman and a warrior. Even his commercial legislation was done, as it were, by haphazard. So, indeed, was everything that he did. He constantly wanted money, and his constant want of money was a great constitutional advantage. He was driven to summon parliaments, commonly yearly, sometimes oftener;

Death of Edward III.

Character of his reign.

and those parliaments gradually learned their strength. How important these silent influences were is shown when we reach the last two years of Edward's life. In the Good Parliament we see how the Commons had been gradually gaining more and more power and enlightenment, till they were able to carry some of the most thorough measures of reform, and to make one of the most successful attacks on the executive government that any legislative body ever made. No doubt it was a great help to the popular party to have the Prince of Wales on their side, and, when he was gone, his loss was sadly felt in the reaction of the next year. But it was a great thing to see a Prince of Wales put himself at the head of a real popular movement of reform—a very different process from a Prince of Wales getting up a factious personal opposition against his father. It is his conduct in this parliament, far more than any of his doings beyond the sea, which gives the Black Prince his real claim to rank among the worthies of England. The acts of the Good Parliament and their unhappy reversal in the next year, the good influence of Prince Edward, and the evil influence of John of Gaunt, are points which stand out conspicuously in the legislative history of this reign. On that legislation there is the dark blot, which extends even to the proceedings of the Good Parliament itself: I mean the constant attempt to control matters which are beyond the proper province of legislation, and, worse still, the constant attempt to control them in a way contrary to the interests of the most numerous and the most helpless class of the people. The depopulation caused by the Black Death made labour scarce; wages of course rose, and successive parliaments—the Good Parliament among them—undertook the cruel and impossible task of keeping wages down by law. At the same time, and very much by reason of the same causes, the emancipation of the villains was largely going on. Thus the class of free labourers was being enlarged and strengthened; the payment of wages for work done was constantly becoming more habitual, while the class of

people who could be set to work without wages was constantly diminishing. One might have almost expected that the emancipation of villains would have been forbidden by law, just as in old Rome restrictions were put on the emancipation of slaves. But happily the Church taught that to set a bondman free was a pious and charitable deed, and men could hardly be ordered by Act of Parliament to abstain from adding to the number of their good works."[1]

Accession of Richard II.

Edward's successor, Richard II., was the son of Edward the Black Prince and Joan of Kent. He was only eleven years of age at his accession, and he reigned twenty-two years; but those twenty-two years were amongst the most interesting and important in our early constitutional history. They witnessed the climax of the struggle between absolute monarchy and parliamentary government. The first twelve years of the reign—the minority of Richard—marked a distinct period when the commons asserted their rights as against the Crown, and when, for some years at least, "the whole executive government was transferred to the two houses."[2] Then succeeded a period during which Richard acted revengefully against the leading nobles; and finally, for about two years, the King exercised a despotism which led to his deposition.

Council of government.

But his rule began well. Immediately after the coronation a council of twelve was appointed as a quasi-regency by the prelates and barons. The Duke of Lancaster protested in the House of Lords against the aspersions of treason of which he had been the victim; William of Wykeham was at peace with the court; and Sir Peter de la Mare, now released from prison, was chosen Speaker of the House of Commons.

Richard's first parliament.

But the country was by no means tranquil when Richard's first parliament met at Westminster on October 13th, 1377. Money was needed, and the relations of the government towards the national Church and the papacy were strained: the commons, however,

[1] Freeman's *Historical Essays*: "The Reign of Edward III."

[2] Hallam's *Middle Ages*.

emulating the spirit of the Good Parliament, laid three proposals before the King. First, they petitioned for a remodelling of the council by the appointment of eight new members; secondly, for the appointment of the personal attendants of the King, with a view to his proper education, and to the regulation of his household; and, thirdly, for due security that in future the measures passed in parliament should not be repealed without the consent of Parliament. On the first and third points Richard returned a gracious answer; but the lords objected to the second demand, on the ground that they were prepared to find safeguards for the royal household without the stringent measures suggested by the commons. Parliament then made an immediate and a liberal grant of two-tenths and two-fifteenths, on condition that the King should appoint two sworn parliamentary treasurers to receive and disburse it. He accordingly appointed William Walworth and John Philipot, two London merchants, as treasurers, and nominated nine persons as his council for one year. The King also granted the petitions praying that during his minority, the chancellor, treasurer, and other great officers of State might be chosen by the parliament, and that no one who had been appointed during the late reign might be admitted as a councillor. While the commons were thus victorious, guarding the control of the supplies, subjecting the accounts of the subsidy of 1376 to searching examination, and procuring the exclusion of Lord Latimer from the council, the lords also showed a proper constitutional spirit. They re-heard the case of Alice Perrers, and she was sentenced to be banished and her estates confiscated.

Action of John of Gaunt.

But there was still one stumbling-block in the path of the national welfare: this was the ambition of John of Gaunt. That restless and intriguing spirit quarrelled with the Londoners, insisted on taking the subsidy out of the hands of Walworth and Philipot, and connived at an outrage committed on two squires, Hanley and Schakel, who had sought sanctuary at Westminster "rather than

surrender a Spanish prisoner whose ransom was coveted by the court."

The Commons control the supplies.

The estates assembled at Westminster for business in April 1378. But to escape an open breach with the citizens of London, John of Gaunt got the parliament moved to Gloucester in the following October. The duke endeavoured to sow dissension between the lords and commons; but in spite of his interference the commons asserted their right to examine the public accounts and to appropriate the supplies. The King was obliged to consent that the accounts of the last subsidy should be laid before Parliament. The public business was not finished by November 16th, and an increased grant of a subsidy on wool and merchandise having proved altogether insufficient, at a further session held in April and May 1379, the grant was annulled, and a poll-tax was substituted, to be paid by persons of both sexes, and of all ranks, estates, and degrees throughout the kingdom.[2] This tax was quite new, and the act specifically stated what sum each man or woman should pay. It ranged from ten marks for the Duke of Lancaster down to a groat for those persons of the humblest grade above the age of sixteen. The proceeds were to be applied exclusively to the national defences, England being at the time in imminent danger of a foreign invasion. In addition to the poll-tax, the subsidy on wool and merchandise was continued for a year. But the new financial experiments proved inadequate in providing funds for the war, the graduated poll-tax only yielding £22,000. There were consequently fresh demands for money in 1380, and these were explained by Sir Richard Scrope, who had succeeded Bishop Houghton as chancellor. The commons were disturbed, and petitioned for the dismissal of the council and appointment of the

The poll-tax.

[1] This right fell into disuse after the reign of Henry IV.; but we shall see that it was revived in 1624 and 1641, and ultimately established as an undisputed principle in 1666.

[2] The Poll-Tax Rolls of 1379 form important and authoritative records of the state of the population at that period.

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chief officers of state and the household by parliament, demanding likewise the election of a committee for the regulation and retrenchment of the court expenses. Richard yielded; Archbishop Sudbury took the great seal from Scrope, and a commission was appointed consisting of three bishops, three earls, three barons, three knights—including John Gildesburgh, the speaker—and three citizens, Walworth and Philipot of London, and Thomas Gray of York. Parliament made a grant of a tenth and a half, and a fifteenth and a half, with another year's subsidy on wool, on the understanding that the whole proceeds were to be applied to the war in Brittany. But when parliament assembled again, at Northampton, in November 1380, things were critical. The customs had not been raised, in consequence of the riots in Flanders; the King's jewels, which had been pledged, were in immediate danger of forfeiture; and a sum of £160,000 was required to meet the national necessities. Adopting one of three courses suggested by the lords, the commons agreed to a graduated poll-tax with the continuance of the subsidy on wool.

Commission on court expenses.

The Peasant Revolt of 1381.

The poll-tax of 1380 was the last precipitating cause of the great Peasant Revolt of 1381. This revolutionary rising had an important bearing upon constitutional government. It was the most formidable revolt of the kind in our history; but happily its course was brief, though it was fierce and sanguinary in character. Amongst its main causes was the passing of the Statute of Labourers, which had pressed heavily upon the country artisans and unskilled labourers; then there was discontent with the prosperous Flemings who had been imported, and whose employment involved the disabling of city mechanics by the guilds. The peasants rebelled against the revival of claims on services which they deemed obsolete; the small farmers of Kent were exasperated with the landlords and lawyers; disbanded soldiers clamoured for employment; dissatisfaction prevailed in some quarters owing to the levelling doctrines of the Lollards; the clergy advanced their grievances;

THE DEATH OF WAT TYLER.

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH

and finally the general severity of taxation and the obnoxious poll-tax rapidly alienated large masses of the community. One of the leaders of the revolt, John Ball, a fanatical priest of Kent, was imprisoned by the Archbishop of Canterbury in Maidstone gaol. When he was released by the insurgents, he proceeded to Blackheath, where he preached a socialistic sermon upon the popular distich—

John Ball and

> "When Adam delved and Eve span,
> Who was then the gentleman?"

The revolt reached its climax in June 1381. It had an almost simultaneous and vigorous manifestation in several shires, but finally its chief seat was in London, where the insurgents were under the leadership of Wat Tyler, who had brought up a host of the disaffected classes from Kent. The mob wrought havoc at John of Gaunt's palace in the Savoy, destroyed Temple Bar, slew many lawyers and Flemings, and committed numberless other outrages. The men of Essex and Hertfordshire also marched into London, and formulated their demands for the abolition of villenage, the issue of a general pardon, liberty to buy and sell untolled in all fairs and markets, and the fixing of agricultural rents at fourpence an acre. King Richard met them at Mile End, and, promising to redress their grievances, persuaded them to go home. Meanwhile, the Kentish men burst into the Tower, and struck off the heads of the Archbishop of Canterbury, the Prior of St. John's, a Franciscan friar, and a sergeant-at-arms who had collected the unpopular poll-tax. Richard passed an anxious night at the Wardrobe, a royal house in Carter Lane, and on the following morning, June 15th, met the rebels in Smithfield. Tyler, intoxicated by his success, behaved so insolently that the Lord Mayor, Sir William Walworth, struck him down, and he was slain by the King's retainers. The moment was an extremely critical one. The rebels drew their bows, but Richard, who was then only fifteen years of age, by his coolness and gallantry saved both his life

Wat Tyler.

and his kingdom. Riding quite alone towards the rebels, he cried out, "Gentlemen, what are you about? You shall have no other captain but me; I am your king: keep the peace." The mob was disarmed of its fury, and Richard, putting himself at its head, led the way to Islington, where he granted the required liberating charter on the spot, and the rebels dispersed. In the country decisive measures were taken against the insurgents. Those of Norfolk, Cambridge, and Huntingdon were utterly routed by the Bishop of Norwich, who sent the leaders to the gallows. Among them was John Lytstere, who was called by his followers King of the Commons. The revolt being quelled, the King revoked the charters he had unconstitutionally granted, and the law courts made short work of the remaining insurgent leaders. The heads of John Ball and Jack Straw were soon exposed on London Bridge. The concession of a change of ministers was made in favour of the political insurgents, but parliament refused redress to the more orderly peasants, whose actions had been of a less culpable character.

Richard grants a charter

Results of the rising.

The rising was not without its effect upon the landlords, who, alarmed by the excesses which had occurred, no longer continued to oppress their dependants, or to stifle their aspirations for freedom. When the reaction on the part of the privileged classes had spent itself, some good remained as the result of the Peasant Revolt. The condition of the agricultural labourer greatly improved. "Rising out of villenage the new freeman enlarged the class of yeomanry, and strengthened the cause of the commons in the country and in parliament; and from 1381 onwards rural society in England began to work into its later forms, to be modified chiefly, and perhaps only, by the law of settlement and the poor laws. Thus indirectly the balance of power among the three estates began to vary."[1]

Bold attitude of Parliament.

We cannot pass from the insurrection of 1381 without noticing the unequivocal language of both lords and

[1] Stubbs's *Constitutional History* and Professor Thorold Rogers's *History of Prices*.

commons with regard to the situation. The commons affirmed that "unless the governance of the realm were speedily amended, the realm itself would be utterly lost and ruined for ever"; and they proceeded to specify defects of government in the royal household and the courts of justice; condemned the grievous oppression of the multitude of embracers and maintainers of suits; complained that neither right nor law was done to any, and that the poor commons were pillaged and ruined. And they closed a long catalogue of grievances with the adjuration, "For God's sake let it not be forgotten that there be put about the person of the King, for and of his council, the most sufficient and discreet lords and knights that man can have or find in the kingdom." The commons appointed a Commission of Reform, and the lords were equally uncompromising in their attitude. On this, as on many other occasions in our early constitutional struggles, the two houses were found working together in perfect unanimity.

Thomas of Woodstock.

Among other results of the Peasant Revolt, it is important to note that it completely sobered John of Gaunt. He now took a subordinate place in public affairs, and the headship of the constitutional party fell chiefly into the hands of his brother Thomas of Woodstock, who became somewhat formidable as the leader of the baronial opposition.

The attendance of members.

A statute passed in 1382 commanded the attendance in parliament, under pain of being amerced, of all those who had been summoned, from archbishops and dukes down to citizens and burgesses; and it was expressed in the statute that citizens and burgesses had been accustomed to be summoned in the old times, as well as the lords spiritual and temporal and the knights of the shire.

Grants.

The parliaments of 1382 and 1383 made every effort to reduce the expenses of the war, and in the latter year the commons, after consulting with the merchants, declared that it was impossible to raise the necessary funds. The parliament of 1382, in its first session, granted tunnage and poundage for the protection of the

coast, and agreed to a grant of a tenth and fifteenth. In the spring session of 1383 the tenth and fifteenth were made over to the Bishop of Norwich, who was called to account for it in the autumn session. It was in this parliament that the King, having allowed the commons to elect nine lords to confer with them, declared that the right of nomination belonged to the Crown; but notwithstanding this, the commons chose their own advisers in 1384. Henry le Despenser, Bishop of Norwich, to whom a grant had been made, as above, for a crusade in Flanders, returned unsuccessful in the autumn of 1383, and was impeached in parliament by the King's orders. His temporalities were seized for the payment of a fine to be imposed by the sovereign.

The King in Scotland.

Richard undertook a military expedition to Scotland in 1385, on money voted in the previous November. A good deal of devastation was perpetrated on both sides, without other decisive effects. After the King's return the young Earl of March was recognised as heir presumptive to the crown.

The Commons and the Clergy

In the parliament of 1385 the commons bestowed a tenth and a half and a fifteenth and a half, and renewed their grant of the subsidy on wool, on condition that the clergy should give a certain sum. The clergy protested that the laity should not charge them, and the King threw out the bill against them. "He was resolved to leave the Church in as good an estate as that in which he found it, or better." The clergy then made a free gift.

Opposition to the court.

Richard created Robert de Vere Marquis of Dublin, and almost immediately afterwards Duke of Ireland—promotions which made the favourite very unpopular. The court was now strongly opposed by the baronial party, which had for its leaders the Duke of Gloucester, Henry of Derby, son of John of Gaunt, Thomas Beauchamp, Earl of Warwick, Thomas de Mowbray, Earl of Nottingham, and Richard, Earl of Arundel.

Contest between the King and the Parliament.

The parliament of 1386, which opened at Westminster on October 1st, furnished a dramatic surprise. The chancellor declared the cause of summons, and announced that,

as the King intended to make good his claim to the crown of France, liberal grants must be made by parliament, in return for which the King would redress all grievances. Richard retired to Eltham to await the course of events. The lords and commons resolved that they neither could, nor would, proceed to any business until the King should return to London and remove Michael de la Pole, the chancellor, and the Bishop of Durham, the treasurer, from their posts. Richard was very wroth, and declared that at their request he would not dismiss the meanest scullion of his kitchen. Parliament remaining firm, the King requested that forty members of the House of Commons should be sent to confer with him at Eltham, but this proposal was rejected. Rumour said that violence was intended against them. Instead of the deputation, the Duke of Gloucester, and Arundel, Bishop of Ely, waited upon the King, and delivered a message to the effect that there was an ancient statute by which the king was bound to hold a parliament once a year, at which, among other matters, they should discuss how the public burdens could most easily be borne, and they had a right to know how and by whom their money was spent. Moreover, there was another statute which ran in this wise, "That if the king will wholly estrange himself from his parliament for the space of forty days, not regarding the vexation of his people, nor their grievous expenses, etc., it shall be lawful for them to return to their own countries." Richard replied that as his people and the commons were evidently endeavouring to raise insurrections against him, he should call in the aid of his cousin, the King of France. Parliament replied that the King of France was his greatest enemy, and would advise him to his ruin. Statutes were also quoted showing that if the King of England, from any malignant design or foolish contumacy, or contempt, or wanton wilfulness, or in any irregular way, should alienate himself from his people, and should not be willing to be governed and regulated by the laws, statutes, and laudable ordinances of the realm, with the wholesome advice of the lords and

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peers of the realm, but should throw himself headlong into wild designs, and stubbornly exercise his own singular arbitrary will, then it should be lawful for his people to depose that king from his throne, and in his stead to establish some other of the royal race. By these and other speeches the King was brought to a better temper. In fact, he was alarmed, and, laying aside his passion, returned to the parliament. The two ministers were removed on October 24th.

The Earl of Suffolk impeached

Articles of impeachment were then exhibited by the commons in full parliament against Michael de la Pole, Earl of Suffolk. The charges against him were seven in number: first, he had, contrary to his oath, accepted, or purchased below their value, great estates from the King; secondly, he had not seen to the execution of the ordinances for the reform of the household by nine lords appointed in the last parliament; thirdly, he was responsible for the misapplication of the money then granted; fourthly, he had fraudulently received the pension of a Limburg merchant long after it had been justly forfeited; fifthly, he had appropriated to himself the revenue of the Master of St. Antony, which, as its owner was a schismatic, ought to have been paid to the King; sixthly, as chancellor, he had sealed charters contrary to the interest of the crown and to the law; and seventhly, by his neglecting to relieve the town of Ghent, that town had been lost, and with it money to the amount of 13,000 marks. Suffolk made an able, and in most respects a convincing reply; but his political enemies were his judges. The commons pressed the charges, and prayed for judgment on six out of the seven counts. He was found guilty, and condemned to surrender all his acquisitions, and to be imprisoned until he should pay a fine or ransom of £20,000. Historians agree that in his administrative capacity Suffolk was equitably entitled to an acquittal, and that his condemnation was purely political.

Commission of reform.

Parliament then insisted upon the appointment of a commission of reform to regulate the realm and the household, and Richard was obliged to agree to it before

he could obtain a subsidy of half a tenth, half a fifteenth, and an increase and continuance of the customs. The commission of regency or continual council was to hold office for a year. Besides regulating the royal household and the realm, it was to inquire into all sources of revenue, receipts, and expenditure, to examine and amend all defaults and misprisions whereby the King was injured or the law broken, and to hear and determine complaints not provided for by the law.

The King resists.

Richard foolishly resisted the new policy, protested in favour of his prerogative, released Suffolk from prison without ransom, and formed a party against the Commission, its leading spirits being Sir Simon Burley, Archbishop Neville, the Duke of Ireland, Chief Justice Tressilian, and Nicholas Brember, the head of the King's party in the city of London. Then he tried to raise forces, tampered with the sheriffs with a view to influencing the elections, and obtained from the judges (under compulsion) a declaration that the commission was unlawful as being contrary to the prerogative of the crown, and that those who had procured it deserved capital punishment. Richard's action, followed by an attempt to seize the Earl of Arundel, roused the Gloucester party to arms. Formal charges of treason were laid against Neville, Vere, De la Pole, Tressilian, and Brember. The five accused persons fled, and only Brember was captured.

The "Merciless Parliament."

The parliament of 1388, which met on February 3rd, was called by some the "Merciless Parliament," and by others the "Parliament that wrought wonders." The five appellant lords—Gloucester, Derby, Nottingham, Warwick, and Arundel—exhibited thirty-nine charges against Suffolk and the other accused. The counts, some of which were common to all, were thirty-four in number. The individuals arraigned were charged with conspiring to rule the King for their own purposes, withdrawing him from the society of his magnates and defeating all the measures taken by the Parliament for his good; with causing him to impoverish the crown by lavish gifts of

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land, money, etc.; with attempting to make Robert de Vere king of Ireland; with carrying off the King into distant parts of the realm and negotiating treasonably with the king of France; with forming secret leagues, levying forces, and coercing the sheriffs; with inciting the Londoners to resist in arms and to slay the lords and commons, and with obtaining from the judges a false opinion to justify them in treating the council of government as traitors. Although this bill of indictment was declared by the judges to be illegal, Parliament asserted that it alone was the supreme judge in matters of such high concern, and the appeal was pressed forward and allowed by the King. Suffolk, Vere, and Tressilian were condemned to be drawn and hanged, and Neville was sentenced to forfeit his temporalities and await further judgment. Tressilian was captured during the trial, and he and Brember were hanged. The judges who had given a favourable opinion on the King's side were next tried and condemned, but their sentence was commuted to one of perpetual exile in Ireland. The Bishop of Chichester, Sir Simon Burley, and others were then tried and condemned, and the laymen were executed. Archbishop Neville was forcibly translated from York to St. Andrews, and Bishop Rushook from Chichester to Triburna in Ireland. Soon after Thomas Arundel was made Archbishop of York. Parliament granted a large subsidy on wool and other merchandise, out of which £20,000 was voted to the lords appellant. Having sat for 122 days, the "Merciless Parliament" rose on June 4th. "Its acts fully establish its right to the title, and stamp with infamy the men, who, whether their political aims were or were not salutary to the constitution, disgraced the cause by excessive and vindictive cruelty."[1] In the ensuing September a parliament was held at Cambridge, where further aids were made, and several valuable laws were passed. The kingdom also had rest, as a two years' truce was concluded with France.

Suffolk and others condemned.

[1] Stubbs's *Constitutional History*.

The Statute of Cambridge forbade the sale of offices, confirmed the previous legislation on labourers, artificers, and beggars; forbade children who had been kept at the plough till twelve to learn any craft or mystery; fixed six as the number of justices of the peace in each county, who were to hold their sessions quarterly; ordered the slanderers of great men to be punished by the king's council, and put provisions of benefices out of the king's protection.

Statute of Cambridge.

The first statute for levying the expenses of knights coming to parliament was enacted in the session of 1388; and it was in confirmation of the common law, the words of the statute being, "That the said levying be made as it hath been used before this time."

The expenses of knights.

In May 1389 Richard surprised the parliament and the nation by a spontaneous and vigorous act of government. He suddenly announced to his council that, being twenty-three years of age, he intended in future to rule for himself. He should be king in deed as well as in name, and would choose his own counsellors. He took the Great Seal from Bishop Arundel and gave it to William of Wykeham, and replaced Bishop Gilbert at the Treasury by Thomas Brantingham. The appellant lords were dismissed from the council, and minor changes were made in the legal body.

Richard assumes the government.

For some years matters went on smoothly; and in 1396 Richard, who had lost his first wife, Anne of Bohemia, two years before, married Isabella, daughter of Charles VI. of France. The truce which was existing at this time between the two countries was prolonged for a further period of twenty-five years. Taxation was more moderate, in consideration of the peace, and few complaints were heard against ministers. Archbishop Arundel succeeded Wykeham as Chancellor in 1391, but five years later resigned the seal to Stafford, Bishop of Exeter, on being appointed to the see of Canterbury.

Peace with France.

The legislation at this period was very important. The Statute of Provisors, passed in 1390, re-enacted the

Important statutes.

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statutes of 1351-62, with additional safeguards against Roman usurpation. An ordinance against maintenance —the old evil of promoting other men's causes in the courts of justice by non-interested parties, and especially those who made a trade out of the political influence of their superiors—included a prohibition against the abuse of giving livery, and the retaining of large retinues. The number of justices of the peace was enlarged from six to eight in each shire, and the staple reformed. The statute of mortmain was enlarged to forbid the contrivance of granting enfeoffments to laymen to the uses of religious houses, and the acquisition of land by perpetual corporations, such as guilds and fraternities; while the private courts of landlords were forbidden to try cases concerning freehold. Various laws for the benefit of trade were passed.

Statute of Præmunire.

In 1393 the great Statute of Præmunire, as it is now known, was passed. It covered, and to a certain extent superseded, the statute of Edward III., and subsequent statutes. Aimed, like the others, against the Roman Curia, the statute of Richard II. expressly stated that the right of recovering the presentation to a church benefice "belongeth only to the King's court by the old right of his crown, as used and approved in the time of all his progenitors, kings of England." The statute condemned the practice of papal translation, rehearsed the promise of the three estates of the realm to support the King in his rights, and enacted that, "If any person purchase or pursue, in the court of Rome or elsewhere, such translations, processes, excommunications, bulls, etc.," he and his notaries, counsellors, and abettors shall forfeit all their lands and tenements, goods and chattels to the King; while the offenders themselves were to be attacked, and brought before the King and his council, or be proceeded against by writ of *Præmunire facias*, as was ordained in other Statutes of Provisors. The whole enactment derived its name from the phrase *Præmunire facias*. These were the opening words of the writ directed to the officer, bidding him forewarn the offender

when and where he was to appear to answer the charges brought against him.

Public tranquillity

For many years the King seemed to be desirous of governing constitutionally, and his council was by no means formed of men of one party. There was general tranquillity, and no excitement save that attendant on the expedition to Ireland in 1394-5. One thing, nevertheless, began to give some trouble—the attitude of the Lollards.

Arbitrariness of Richard.

But political difficulties began to overshadow the religious. There was a deep-seated quarrel between Lancaster and the Earl of Arundel, and Richard was so exasperated with the latter that he struck him violently on the occasion of his first queen's funeral. After his marriage with Isabella, the King changed, and developed a rapid tendency towards absolutism. He also began to exact money by every exceptional and unconstitutional expedient, and a cry was raised of the great extravagance of the court, which was again under French influences.

Case of privilege.

An important case of privilege arose during the sitting of the parliament of 1397. The estates met on January 22nd, and granted to the King tunnage and poundage for three years and the custom on wool for five years. Then Richard openly defied his parliament, and asserted his arbitrary power by the prosecution of Sir Thomas Haxey, a prebendary of Southwell, and a proctor of the clergy attending parliament under the præmunientes clause. Haxey had introduced a bill complaining of maladministration, and of the excessive charges of the King's household. The specific allegations were four in number—to wit, that the sheriffs and escheators were not, as the law directed, persons of sufficient means, and were continued in office for more than a year; that the marches of Scotland were insufficiently defended; that the abuses of livery and maintenance were very prevalent; and that the condition of the royal household was such that a multitude of bishops possessing lordships were maintained by the King with their retinues,

Prosecution of Thomas Haxey.

and a great number of ladies and their attendants lived in the King's lodgings and at his cost. Richard was very indignant, sent for the lords, and ordered the Duke of Lancaster to demand from the commons the name of the author of the bill. The commons, with profuse apologies, gave up Haxey, who was adjudged in parliament to die as a traitor. Archbishop Arundel, however, claimed him as a clergyman, and he eventually received a full pardon. But the incident proves that freedom of speech was by no means yet fully enjoyed by members.

Trial of Arundel and others.

Richard continued his arbitrary policy by acting against several of his most powerful subjects. Having been informed by the Earl of Nottingham that Gloucester, Arundel, and Warwick had initiated a powerful conspiracy against him, he arrested Warwick, and seized the Duke of Gloucester and sent him in custody to Calais. Arundel surrendered. A parliament entirely favourable to the King assembled at Westminster on September 17th, 1397, and measures were taken to revoke the acts prejudicial to the King's rights. The commission of 1386 was repealed, as were also the pardons granted to Gloucester, Arundel, and Warwick in 1388 and 1394. The Archbishop of Canterbury was impeached by the commons and banished, and then the Earl of Arundel was brought to trial, condemned, and beheaded. Gloucester, who had died at Calais after confessing his treason, was still proceeded against and convicted. Warwick confessed his crime, and was condemned to perpetual imprisonment. Parliament defined the four articles of treason to be—compassing the King's death, or his deposition, surrendering the liege homage due to him, and levying war against him. All the acts of the Parliament were declared to have the full force of statutes, and any attempt to repeal or overturn them was defined as treason. Those noblemen who had supported the King were next handsomely rewarded.

The King absolute.

The parliament of Shrewsbury, which met on January 28th, 1398, virtually constituted Richard II. an absolute

monarch. It declared void the acts of the parliament of February 1388, and restored all persons prejudiced to their rights. The old statutes against the Despensers were repealed, the Duke of Hereford was pardoned afresh, a general amnesty was issued, and even that wretched creature Alice Perrers was promised redress. The commons, with the assent of the lords, granted to the King a tenth and a fifteenth, and half a tenth and a fifteenth for the coming year and a half; but, what was more mischievous from the national point of view, the subsidy on wool, woolfells, and leather was granted for the term of the King's life. This was more than had been given to any English sovereign. Finally, Parliament delegated its authority to eighteen members chosen from the whole body—ten lords temporal (six to be a quorum), two earls as proctors for the clergy, and six members of the House of Commons. The committee consisted of persons devoted to the King's interests, and its powers were so indefinitely expressed that it completely usurped the rights of the legislature, and exercised all the powers and functions of a full parliament.[1]

Effect of his policy.

Richard now seemed to be thoroughly established as an absolute sovereign. He had crushed his enemies, manipulated the parliament, obtained a revenue for life, and secured a solemn recognition of his prerogatives. The limitations which had hitherto been placed by the lords and the parliament upon the powers of the sovereign were for the time being swept away. But the experience of more than one king of England has shown that, when they have appeared to be most secure in the exercise of their tyrannical power, they have in reality been courting their downfall. So it was with Richard. This infatuated monarch precipitated his own ruin. Having banished the dukes of Hereford and Norfolk, in consequence of a bitter quarrel between them, he seized upon the estates of John of Gaunt—who died in January 1399—in spite of

[1] As Sir Edward Coke observes in his *Institutes*, this was against the dignity of Parliament.

his promise to secure them to Hereford in the event of his father's death.

Return of Lancaster.

Henry of Lancaster was moved to action by this treacherous conduct. The King having gone to Ireland in May 1399, leaving the Duke of York as regent, Henry landed in England on July 4th. At first the Duke gave out that he only came to recover his own inheritance; but being joined by the Earl of Northumberland, his son Hotspur, and other lords, and finding himself at the head of an army of 60,000 men, he boldly laid claim to the kingdom. Richard, on his return from Ireland, found the kingdom had passed from his hands. He met Henry of Bolingbroke—whose popularity was in striking contrast to his own unpopularity—at Flint. "I am come before my time," said Lancaster; "but I will show you the reason. Your people, my lord, complain that for the space of twenty years you have ruled them harshly: however, if it please God, I will help you to rule them better." "Fair cousin," replied the King, "since it pleases you, it pleases me well." Richard was conveyed to London and placed in the Tower.

Richard resigns.

Parliament was summoned to meet on September 30th; but as in the interim the King executed a formal act of resignation, fresh writs were made out to the same individuals, to be issued after the King's resignation, and to be returnable six days afterwards. Richard's formal and written renunciation of the crown absolved all his people from their oaths of allegiance, renounced all rights save those of his successors, and acknowledged that he was himself wholly insufficient to govern. He appointed the Archbishop of York and the Bishop of Hereford as his proctors, to present his act of renunciation to the assembled estates. The resignation was accepted by Parliament on September 30th.

The charges against him.

The articles of accusation prepared and read before the estates were thirty-three in number. Seven of them related to the plot of 1387, the tampering with the judges, the revolt of Robert de Vere, the revocation of the pardons of the appellants, and the preliminary and

consequent acts of violence and injustice. Others recited the King's faithlessness and injustice to Henry of Lancaster and Archbishop Arundel; his shameless dissimulation, both generally and in particular towards the Duke of Gloucester; his infractions of the constitution, including the delegation of the powers of Parliament to a committee of estates, the interpolation of the record of Parliament, and the fraudulent use of the delegation to engross the entire authority in his own hands; his abuses of the prerogative; illegal taxation; his claim to make laws by and through himself alone; his assertion that the lives and goods of his subjects were his own; and his attempt to bind the people by oath to acquiescence in his acts after his death. The articles having been read, the estates voted the deposition of the King. Seven commissioners were appointed to execute the sentence, one of whom, Bishop Trevor of St. Asaph, read the written judgment, pronouncing Richard to be useless, incompetent, altogether insufficient and unworthy, and therefore deposing him from all royal dignity and honour. The King was not altogether friendless, but the only person who had the courage to speak in parliament on his behalf was Merks, Bishop of Carlisle. According to a foreign writer, he spoke up vigorously for Richard; and the probabilities are in favour of this, as he lost his see immediately afterwards.

His deposition.

When the deposition of Richard had been effected, Henry of Lancaster, rising from his place, and standing where he might be conveniently seen by the people, signed himself with the cross on his forehead and breast, and having called upon the name of Christ, claimed the crown in this form of words, uttered in his mother tongue: "In the name of Father, Son, and Holy Ghost, I, Henry of Lancaster, challenge this realm of England, and the crown with all the members and the appurtenances; also that I am descended by right line of the blood, coming from the good King Lord Henry the Third, and through that right that God of His grace hath sent me, with help of my kin and my friends, to

Henry elected king.

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recover it; the which realm was in point to be undone for default of governance, and undoing of the good laws." The Duke's election was then assented to by the whole assembly, and he was led to the throne, and seated upon it, by the Archbishops of Canterbury and York. Some days later the new monarch created his eldest son, Henry, Prince of Wales, Duke of Cornwall and Earl of Chester; and it was enacted by all the estates that the said Prince should succeed his father in the realm of England, and they all promised to accept and obey him accordingly. Thus, while Richard by his cession of the crown abandoned the supremacy of prerogative, Henry IV. in accepting it, took care to make his election valid by securing for himself a parliamentary title.

Causes of Richard's downfall.

While the personal wrongs of Henry furnished the opportunity for the revolution, it must be confessed that a change in the government had become inevitable. Richard was opposed by the Church on the ground of his supposed Lollard tendencies, and his treatment of Archbishop Arundel; the nobles detested him because he endeavoured to rule without their aid, and desired to keep them in subjection; another strong party resented the French marriage, and encouraged the complaints against the extravagance and follies of the court; and the people generally sympathised with Lancaster, as having been unjustly defrauded by the deposed king. There were some who even asserted that Richard was not the son of the Black Prince, but a supposititious child; while others held the untenable theory that Henry was the true heir to the throne, as the representative of Edmund of Lancaster, who was, they said, the elder brother of Edward I., and the rightful heir of Henry III.

His character.

What became of Richard II., the last of the Angevin kings or Plantagenets proper, is not accurately known. He was murdered at Pontefract by Sir Piers Exton, according to some, while others asserted that he starved himself to death. Richard has been compared with Edward II., but the analogy is not a just one. In character he was superior to the weak and worthless Edward II.

He was a lover of art and literature, and a patron of both. He was captivated by display and magnificence, and fond of pleasure; and although he had notions of reforming the state, and was inclined to peace, he endeavoured to govern by personal despotism, the cardinal mistake of more than one English sovereign.

Constitutional survey.

During this period of constitutional transition, the men who fought for political freedom were not the leading nobles, like Thomas of Lancaster or Thomas of Woodstock; they were not the clerical body generally; nor were they even the town communities or the great merchants. They were the knights of the shire, though, no doubt, with some support from the representatives of towns, who sustained the chief brunt of the battle against the crown. The growth of prerogative also stimulated the desire for constitutionalism. With regard to the customs there had been a continuous struggle between the commons and the crown; but, as Hallam shows, "no attempt at unauthorised taxation was made after the accession of Richard II." Great difficulty was experienced in, at least, three reigns—those of Edward II., Edward III., and Richard II.—in regulating the expenditure on the royal household, and the necessary reforms were not effected. The bad example of these kings, however, was to have a salutary result in the succeeding reigns. The responsibility of ministers to parliament was from time to time asserted and enforced; but, alarmed somewhat by the possibility of an easy abuse of the power of impeachment, the commons protested that the judgments of parliament belonged to the king and the lords only, and they endeavoured to avoid responsibility for the judicial proceedings taken against Richard II. With regard to petitions, the commons not only insisted upon clear and formal answers, but demanded that their petitions should not be tampered with in the process of converting them into statutes, and also that all statutes should be properly enforced. With regard to legislation, Dr. Stubbs has shown that while the right of assent belonged to the several estates, and legislation was sometimes

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initiated on petition of the clergy, with the assent of lords and commons, the consent of the estate of clergy "has never been maintained as a principle, nor even as a fact of constitutional government."

Position of the Commons.

The substantial power of legislation was already vested in the commons, though the king still retained too much power in his right to utter the words *Le Roi le veut*, or *Le Roi s'avisera*. In the reign of Edward III. the commons acquired the right to deliberate on war and peace, yet they were very chary of exercising it under Richard II. But they claimed the fullest right to review the administrative system, and to recommend executive reforms as well new statutes. They also petitioned against the usurped jurisdiction of the Privy Council; but this jurisdiction Richard asserted as a prerogative right. The confusion between legislative and executive functions, and the intrusion of Parliament into the domain of the latter, led to considerable difficulty, and probably strengthened the King's extreme ideas of prerogative. Touching the constitution of the House of Lords, its numbers practically depended upon the will of the king. Although annual parliaments had been ordered by the lords ordainers in 1311, and directed by statutes subsequently, they were intermitted when biennial or triennial grants had been made, though yearly assemblies were the rule. The sovereign fixed the place of meeting, and he also had the power of prorogation. No alteration in the numbers of the House of Commons was attempted during the first century of its existence as a separate body; but the king frequently endeavoured to influence the election of members. As to the struggle between royal supremacy and parliamentary authority, the revolution of 1399 was not a decisive settlement of the controversy. It marked an important stage in the conflict: but nearly three centuries had still to run before it could be said that popular government had been secured through the people's representatives in the House of Commons.

BOOK III.

THE HOUSE OF LANCASTER.

1399 to 1461.

CORONATION OF HENRY IV.

BOROUGH OF LEWISHAM
MANOR HOUSE
PUBLIC LIBRARIES

CHAPTER I.

REIGN OF HENRY IV.

HENRY IV. was crowned on October 13th, 1399, with great pomp and circumstance. The Lancaster sword was borne before him, the golden eagle and cruse were used for the first time; and from the knighting of forty-six candidates for the honours of chivalry, Froissart and other writers date the foundation of the Order of the Bath. The new sovereign fully acknowledged that he held the crown by the will of the nation. In ratifying the compact between himself and his people, Henry addressed the prelates, lords, knights, and burgesses gathered round him in these terms: "Sirs, I thank God and you, spiritual and temporal, and all estates of the land; and do you to wit it is not my will that any man think that by way of conquest I would disinherit any of his heritage, franchises, or other rights that he ought to have, nor put him out of the good that he has and has had by the good laws and customs of the realm, except those persons that have been against the good purpose and the common profit of the realm." Henry could not have enforced his claim to the throne had the people declared against him, and therefore the deposition of his predecessor and the proclamation of himself assume great constitutional significance. *Henry's coronation.*

Constitutional development made little progress during *His rule.*

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the rule of the rival houses of Lancaster and York. It was a period of conflict and transition, yet the parliamentary history of the period is by no means devoid of interest. The fourth Henry began with a sincere desire to work harmoniously with the estates, but about the middle of his reign his character underwent a change. While he still yielded to his parliaments their most substantial rights, he became vindictive and cruel. His rule was remarkable for the restoration of Anglican orthodoxy against Lollardy, for the partial introduction of the horrors of the Inquisition, and as being the culmination of mediæval constitutionalism. It is curious, as Foxe the martyrologist observed, that Henry IV., who deposed Richard II. for his tyranny, "was the first of all English kings that began the unmerciful burning of Christ's saints."

First Parliament.

On October 14th, the day after the King's coronation, parliament met for the despatch of business. The House of Lords consisted of 49 peers, with the usual number of prelates, and the House of Commons of 74 knights and 176 representatives of boroughs. Great changes had occurred in the peerage in the course of a century. There were some new titles, but on the whole there had been a striking diminution in the various ranks of the noble orders. The Speaker chosen by the Commons, Sir John Cheyne, was in sympathy with the Wycliffites. The clergy warmly resented his election, and under the plea of ill health he declined to act, and Sir John Doreward was chosen in his place. All the proceedings of Richard's last parliament were annulled on the petition of the Commons, and the Acts of that of 1388 reinstated in their validity. Wherever possible, the sufferers of 1397 were restored in blood and estate; the King promised that the powers of parliament should not again be delegated to such a committee as Richard had appointed; and the blank bonds, with which the deposed monarch used to tax the counties illegally, were cancelled.

Richard and the Commons.

A sentence of perpetual imprisonment was passed on the unhappy Richard on October 27th; but the commons, by protesting some days later that they were not his

judges, guarded themselves against the consequences of a possible reaction in his favour.

The Lords Appellant condemned.

Proceedings were next taken against the lords appellant of 1397 for alleged complicity in the murder of Gloucester. Bishop Merks in person courageously disavowed all such participation. Sentence was pronounced against the accused, but they were not condemned to death. The three Dukes—Albemarle, Surrey, and Exeter—were reduced to their former rank as earls, and Dorset and Le Despenser were stripped of their titles. Salisbury, who was to prove his innocence by battle, managed to regain the royal favour. Hall, who was regarded as one of the actual murderers of Gloucester, had already been condemned and executed. The Earls of Suffolk, Arundel, and Warwick were next restored; the three persons excepted from the pardon of 1388—Richard Clifford, Privy Seal, Metford, Bishop of Salisbury, and Bowet, afterwards Archbishop of York—were secured by a royal declaration of their loyalty; the sentence against Haxey was again annulled, and the pardons granted by Richard in 1398 confirmed; Archbishop Arundel was allowed to sue for damages from Walden, his usurper in the primacy; and the Prince of Wales was created Duke of Aquitaine and Lancaster.

Legislative measures.

Parliament granted a subsidy on wool for three years, and a fifteenth and tenth granted to Richard was confirmed to his successor. Sixty important petitions were heard and answered, and a statute of twenty clauses was passed, which among other things defined the law of treason in accordance with the statute of Edward III., forbade appeals of treason to be made in parliament, and prohibited the delegation of the powers of parliament to a committee like that which led to the undoing of Richard II.

Death of Richard.

The degraded nobles now formed a plot to seize the King on Twelfth Night, and replace Richard on the throne. The conspiracy was discovered, and swift vengeance overtook those implicated, including Kent, Salisbury, Le Despenser, Huntingdon, Lumley, Sir

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Thomas Blount, and Sir Benedict Shelley. The failure of the plot sealed the fate of the deposed king. Whether Richard was murdered at Pontefract, or starved himself to death, or whatever became of him, is not positively known, but Henry solemnly declared—and it is generally believed—that he had no hand in his death.

Parliament of 1401.

Difficulties with France, and expeditions into Scotland and Wales, marked the course of the year 1400. Money was urgently needed, and Parliament was summoned to meet at York in October, but the date and place were changed, and the Houses eventually met at Westminster, January 20th, 1401. The session which ensued was a long and important one. Sir William Thirning, the chief justice, made the opening speech, dealing with the pressing financial necessities. He produced no figures, but a report laid before the council showed that besides the expenses of the court, upwards of £130,000 was required for the defence and administration of the realm. Richard's accumulations, estimated at £350,000, had disappeared, and the King had already incurred a debt of £16,000.

Speaker Savage and the King.

The commons resolved to turn Henry's necessities to their advantage. They elected Sir Arnold Savage, one of the members for Kent, as their speaker. Savage was a most loquacious person, and delighted to put himself in evidence. After making the usual protest, he delivered a long exordium upon the chief justice's speech, and hoped the commons might have good advice, and not be pressed suddenly at the last with the most important matters. Through the Earl of Worcester, the King replied that he imagined no such subtilty. Three days later the commons returned to the charge, and the Speaker said that some of their body, out of complaisance to the King, might report their proceedings before they were completed, a course which might exasperate the King against individuals. He prayed that the King would not listen to any such tales, and Henry promised that he would not. The Speaker then expatiated in a set speech upon the course to be adopted with regard to a number of lords who had been

challenged by the French as traitors to King Richard. Henry again thanked the commons for their advice; but when, upon January 31st, the irrepressible Savage delivered himself of a third address, the patience of the King was fairly exhausted, and he requested the commons to put all their requests in writing for the future.

The Parliamentary record.

The commons demanded that the redress of grievances should precede supply, but for a time Henry resisted this constitutional doctrine; yet he was obliged to comply with the petition that he would revoke the assignment of certain pensions charged on the subsidy of wool, which in the previous session had been granted for a special time and purpose. The commons likewise urged that the record of Parliamentary business should be ingrossed before the departure of the justices, whilst the facts were still present in their memory. The record was sometimes distorted. It was agreed that the clerk of the parliament should do his best with the advice of the justices, and subject to the advice of the king and lords. Shortly before the dissolution of the parliament, a grant was made of a fifteenth and tenth for a year, with tunnage of two shillings and poundage of eightpence for two years.

Statute of Heresy.

The unenviable distinction of the parliament of 1401 was its action against the Lollards. The Act *De Hæretico Comburendo* was passed. William Sawtre, a clergyman at one time beneficed at Lynn, and subsequently in London, was the first person burnt in England for Lollardy. He was put to death on the simple authority of the King's writ, which has caused some controversy, as the step was without precedent. Proceedings were taken against him during the same session in which the above-mentioned Act was embodied in the statute of the year. The unanimity of the clergy and the lords and commons with regard to this oppressive legislation showed the strength of the reaction against the Wycliffites. By the provisions of the infamous Statute of Heresy, "the hindrances which had till now neutralised the efforts of the bishops to enforce the common law were utterly taken away. Not only were they permitted to arrest

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all preachers of heresy, all schoolmasters infected with heretical teaching, all owners and writers of heretical books, and to imprison them even if they recanted at the King's pleasure, but a refusal to abjure or a relapse after abjuration enabled them to hand over the heretic to the civil officers, and by these—so ran the first legal enactment of religious bloodshed which defiled our statute-book—he was to be burned on a high place before the people."[1]

National pacification.

The House of Lords took its share in the work of national pacification and retribution. The latter, owing to Henry's wise clemency, was made as light as possible. While sentence of forfeiture was declared against the Earls of Kent, Huntingdon, and Salisbury, the Earls of Rutland and Somerset were, on the petition of the commons, declared loyal. The heirs of the judges Holt and Burgh were restored; the proceedings against Sir Simon Burley were reversed; and Henry le Despenser, Bishop of Norwich, who had actually opposed Henry's march in 1399, was reconciled to the King. But the evils of Richard's misgovernment were too deeply rooted to be thus healed.

Henry becomes unpopular.

Many things soon tended to make Henry unpopular—his failure in Wales, the oppression of his purveyors, exactions on the sale of cloth, etc.; and an attempt was even made upon his life. In 1402, Edmund Mortimer, brother of the late Earl of March, who had been declared heir-presumptive by Richard, joined Glendower, and boldly announced a scheme to restore Richard if he were alive, or if he were dead to place the Earl of March upon the throne. A number of persons were executed for spreading the false news that Richard was alive, and for supporting his cause, and the only piece of good fortune that Henry could point to was the defeat of the Scots at Homildon Hill, by the Earl of Northumberland and Henry Hotspur, in September 1402.

Action of the Commons.

In the parliament of 1402, which met on September 30th for the despatch of business, the commons desired

[1] Green's *History of the English People*.

a conference with the lords on public affairs, and the King granted the request, with a protest that it was not done of right but of special favour. Four bishops, four earls, and four barons were appointed, and a liberal grant of supplies was made, as well as a special grant for the defence of the realm. A statute was passed confirming the privileges of the clergy; and as showing the general uneasiness which prevailed, there was a notable increase in the number of petitions, while the revival of old complaints, and the demand for the enforcement of old statutes, were very pronounced.

The King's second marriage.

Henry—who had lost his first wife Mary Bohun, daughter and co-heiress of the last Earl of Hereford—married in February 1403 Joanna, daughter of Charles II. of Navarre, and widow of the Duke of Brittany. The alliance, however, did not strengthen his position. The King made his half-brother, Henry Beaufort, Bishop of Lincoln, Chancellor. The Percies, who had rendered great services to the king, were notoriously discontented, not being able to get supplies from the Royal Treasury, and at length they broke out into open rebellion. The king marched against Hotspur, and encountered him at Shrewsbury, July 21st, 1403. Hotspur was slain, and the Earl of Worcester taken and beheaded. Upon this, Northumberland made his submission, and in six months he was restored to his liberty and estates. Things were in a critical condition, nevertheless, with the King and his government.

Parliament of 1404.

When parliament met in January 1404, there were serious complaints respecting domestic mismanagement, the sudden diminution of the revenue, the lavish grants of the king, the abuses of liveries, the impoverishment of the royal estates, and the extravagant administration of the household. These complaints were formulated at a Conference, and on a petition of the commons four persons in close attendance on the King were removed from their posts. The cry against aliens was renewed, and with the exception of a few persons in the queen's household all these were banished. The administration

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of the royal household was completely revolutionised, and a sum of £12,100 arising from various specified sources was set apart from the general revenue of the crown to be devoted to this purpose.[1] The list of persons appointed by the King to act as his great and continual council was published, and it was found to contain the names of six bishops, Edward of Rutland, now Duke of York, the Earls of Somerset and Westmoreland, six lords, including the Treasurer and Privy seal, four knights—including the Wycliffite Sir John Cheyne, and the aggressive speaker Sir Arnold Savage—and three commoners. A personal discussion arose between the king and the commons on the question of supplies, when it was finally arranged that a new tax should be tried of a shilling on every pound's worth of land, to be expended, not by the ministers, but by four treasurers of war, three of whom were citizens of London. The settlement of the succession on the Prince of Wales and his heirs, or in default of them, upon the King's other children and their heirs, completed the business of the session.

Supplies.

The Unlearned Parliament.

What is known as the Unlearned Parliament met at Coventry in October 1404. It acquired its name from the fact that all lawyers were excluded from it. If Henry thought their absence would expedite the business of the nation, his prescience was justified. The commons made liberal grants of two tenths and fifteenths, a subsidy on wool, and tunnage and poundage for two years from Michaelmas 1405. The lords and commons confirmed the land-tax voted in the last parliament.

Mortimer's conspiracy.

The year 1405 was the crucial period in Henry's reign. A great conspiracy arose in February, when Glendower, Mortimer, and Northumberland signed an agreement for the partition of England and Wales between them. Scrope, Archbishop of York, supported them, and drew up ten articles against the King, charging him with perjury, usurpation, connivance at Richard's murder,

[1] *Rot. Parl.*, iii. 528.

and other unconstitutional acts. The rebels proposed to lay their complaints before a free Parliament, to be held at London. Henry marched north against them, however, and Scrope and Mowbray were taken and executed. The death of the archbishop was looked upon as a judicial murder, and this act, done against his better nature, worked evil for Henry amongst the people. Meanwhile, the great want of money was seriously embarrassing his operations in Wales, Ireland, and France.

Parliament of 1406.

The parliament of 1406 opened on March 1st. The merchants undertook the defence at sea, on condition of receiving the tunnage and poundage and a quarter of the subsidy on a wool. When the estates reassembled after Easter, a day was fixed for the expulsion of the aliens. The king agreed to nominate a council of seventeen members, including Sir John Cheyne and Sir Arnold Savage.

Reform in the Statutes.

The second parliamentary session opened on October 13th, and lasted until December 22nd. The King empowered the auditors to pass the accounts of Lord Furnival and Sir John Pelham, the war treasurers ; the commons made a grant of a fifteenth and tenth, with tunnage and poundage, because of "the great confidence which they had in the lords elected and ordained to be of the continual council" ; and to secure accuracy in the statutes, the acts of the session were ordered to be engrossed under the eye of a committee elected by the commons. A scheme of reform in government was produced, which the King's councillors swore to obey. On the last day of the parliament, the sum of £6000 was voted to Henry, while the wages of the representatives amounted to more than £5000.

Further legislation against the Lollards took place this session, and sentence of forfeiture was passed against Northumberland and Bardolf.

County elections.

But the most important statute of the year was that relating to county elections. Elections were made in full county court, at the next meeting of the court after the reception of the writ. Certain persons were specially summoned to the elections ; but at the beginning of the

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fifteenth century the county court was no longer generally attended by influential people. Great irregularity prevailed in the election of knights of the shire in the fourteenth and fifteenth centuries: sometimes a crowd of the lower class attended; sometimes the election was made by a few great people or their stewards; at other times it was managed by lawyers or interested persons, while not infrequently the sheriff ordered matters as he liked. To remedy these defects, an Act was now passed directing that the knights should be chosen henceforth, as before, by the free choice of the county court, notwithstanding any letters or any pressure from without, and that the return should be made on an indenture containing the names and sealed with the seals of all who took part in the election. While this act of 1406 restrained the undue power of the sheriffs in making returns, it did not give the freeholders the sole right of election.[1] Four years later—that is, in the parliament of 1410—a statute was passed directing a penalty to be exacted from the sheriffs who did not hold the elections in legal form, and making the conduct of the elections an article of inquiry before the justices of assize.[2]

The Commons assert their right as to grants.

The parliament of 1407 met at Gloucester, and sat from October 20th until December 2nd. It was complaisant towards the King, and made liberal money grants; but the commons claimed the right to declare all grants of money by the mouth of their Speaker. They had been much alarmed by the interference of Henry and the lords

[1] With regard to elections, the ceremony which in later times came to be called the nomination was really the ancient election itself in the county court. When more than one candidate was proposed, the election was decided by a show of hands. Gradually, from being regarded as a burden, a seat in parliament became an object of ambition, and the custom arose of taking a poll of those electors who were not present in the county court. A poll was only taken when demanded, and there was no limit to the time during which the sheriff might keep it open, except the date on which the writ was returnable.

[2] Statutes, ii. 162.

on the question of the aids, and affirmed that such action was greatly prejudicial and derogatory to their liberties. Representations were made to the king, who gave way, and the rule was established that it was lawful for the lords to deliberate in the absence of the King on the state of the realm and the needful remedies ; that likewise it was lawful for the commons to do the same ; provided always that neither house should make any report to the King on a grant made by the commons and assented to by the lords, or on any negotiations touching such grant, until the two houses had agreed, and that then the report should be made through the speaker of the commons.[1] This was an important constitutional position for the House of Commons to have achieved.

Public Events.

The nation was now without a parliament for two years. The year 1408 was marked by the rebellion of the Earl of Northumberland, and his death on Bramham Moor. Archbishop Arundel endeavoured to instigate oppressive measures against the Wycliffites, but he was strongly opposed, and resigned the Great Seal in December 1409. He was succeeded by the King's half-brother, Sir Thomas Beaufort.

Parliament of 1410.

Parliament met on January 27th, 1410. Thomas Chaucer, a cousin of the Beauforts, who had first been elected Speaker in 1407, was again chosen for the office. The Lollards were strong in this house, for the commons prayed for a return of their previous petitions against Lollardy, requesting that nothing might be enacted thereon. The knights of the shire sent in to the King and the lords a startling recommendation that the lands of the bishops and greater abbots should be confiscated, not for a year only, as had been already suggested, but for the permanent endowment of fifteen earls, fifteen hundred knights, six thousand esquires, and a hundred hospitals, £20,000 being still left for the King. Although the clergy were far too wealthy, this revolutionary proposal was rejected. Henry requested an annual revenue

The lands of the clergy.

[1] *Rot. Parl.*, iii. 611.

CHAP. I. Reign of Henry IV.

for life. While this was denied him, he obtained a gift of 20,000 marks, and grants of tenths, fifteenths, subsidies, and customs, extending over two years. Half the tenth and fifteenth amounted to £18,692; but the charges against it were upwards of £20,000, thus showing a still further need of economy.

The King's illness.

From the year 1410 the Prince of Wales took the lead in the council, owing to his father's illness. Jealousies sprang up in the royal family, and in the midst of much disquietude the parliament of 1411 met on November 3rd. Henry had become restive under the influence of the Beauforts, and leaned towards his second son and Archbishop Arundel for advice. When Speaker Chaucer made the usual protestation, and claimed the usual tolerance accorded to open speaking, the King replied that he might speak as others had done before him, but that he would have no novelties introduced, and would enjoy his prerogative. Mr. Speaker requested a day's respite, and then made a very humble apology.

Speaker Chaucer.

Visitation of Oxford University.

A Church affair of some consequence came before this parliament. The Archbishop of Canterbury had claimed his right of visitation over the University of Oxford, but he had been repulsed by the Chancellor Courtenay and the proctors. This led to a feud of much bitterness, but in the end the archbishop's power of visitation was confirmed by parliament, and it was decreed that for every interruption the University authorities should pay £1000 to the king.

Statute against riots.

A statute against riots and tumultuous public assemblies was also passed in this parliament. It was enacted "that all justices of the peace should have a very strict eye upon the subject, to prevent all riotous meetings, and sheriffs to be as watchful to suppress them; which if they neglected they should each of them forfeit £100 for every such offence."

General pardon.

The parliament broke up on December 20th; and a general pardon was issued on December 22nd, the only exceptions being Owen Glendower and Thomas Ward of Trumpington, who personated Richard II.

Meantime the King's health was rapidly failing, but he held a council at Whitefriars in November, in furtherance of his desire to go once more on crusade. From a dangerous attack of illness at Christmas he rallied, and called a parliament for February 3rd, 1413. Whether it was formally opened and proceeded to business is not known, but it met, and the members subsequently made their usual claim for expenses. Henry died on March 20th, and was buried in Canterbury Cathedral near the Black Prince.

Death of Henry.

While Henry IV. was harassed by evil influences, and surrounded by difficulties, on the whole he left behind him "a strongly founded throne, and a national power vastly greater than that which he had received at his coronation." Some portion of the credit for this was due to himself. While he persecuted the Lollards, and failed in war, he yet "reigned as a constitutional king; he governed by the help of his parliament, with the executive aid of a council, over which parliament both claimed and exercised control. Never before and never again for more than two hundred years were the commons so strong as they were under Henry IV.; and in spite of the dynastic question, the nation itself was strong in the determined action of the parliament." Although few believed in the validity of the title of the new dynasty, the reign of its founder "exemplified the truth that a king acting in constitutional relations with his parliament may withstand and overcome any amount of domestic difficulty."[1] Henry sometimes governed unwisely, but when the patriots of both houses concerted measures for the preservation of their liberties and privileges, he did not persist in the imposition of his sovereign authority.

[1] Stubbs's *Constitutional Hi*

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CHAPTER II.

HENRY V. AND HENRY VI.

Character of Henry V.

HENRY V., though not twenty-five years of age when he ascended the throne, speedily proved that he was a wise and clement king as well as a brilliant soldier. All through his reign it was his object to be an Englishman among Englishmen, and to work in harmony with the parliamentary representatives of his people. As a warrior, he added a new page of glory to the history of his country, making her name revered abroad. It is not pleasant to regard this noble monarch as a religious persecutor; but it should be borne in mind that it was rather as active traitors than as a religious sect that he regarded the Lollards. That he was most reluctant to proceed against them cannot be denied.

His earliest acts.

But it is from the legislative point of view that this work is concerned with Henry V., one of the loftiest and purest of English sovereigns. In his first acts he gave evidence of the greatness of his character and his trust in the people. He released the young Earl of March from his captivity, and reinstated the son of Harry Percy in the family honours and possessions.

First Parliament.

Henry was crowned on April 9th, 1413, and his first parliament, which met on May 15th, was really that which had met before the death of Henry IV. It granted the subsidy on wool for four years for the defence of the realm, tunnage and poundage for a year,

and a fifteenth and a tenth for the keeping of the sea. The King was allowed a preferential claim on the public revenue, to the amount of £10,000 for the expenses of the household, chamber, and wardrobe. The commons made emphatic complaints of the weakness of the late reign and the incompleteness of the national defence, the want of good governance, and the lack of due obedience to the laws. The law of 1406 relating to elections was confirmed and amended, with a clause ordering that residents only should be elected; the measures against the aliens were enforced; the King granted a general pardon; and the usual anti-papal petitions were presented and accorded.

Oldcastle's rebellion

Great trouble arose almost immediately in connection with the Lollards. Their leader, Sir John Oldcastle, was a member of the royal household, and a personal friend of Henry V., who was loth to proceed against him. Oldcastle married the heiress of the barony of Cobham, and in her right was summoned to parliament as Lord Cobham, by which name he is often described. In 1413 Oldcastle was indicted before Convocation, and, refusing to appear, was excommunicated. Later he attended before a spiritual court at St. Paul's, but refused to recant his opinions. He was thereupon pronounced a heretic and imprisoned in the tower. He made his escape, and threatened a great rising in St. Giles's Fields, but Henry's vigorous action circumvented this. Oldcastle escaped from London, and in 1415 attempted to incite a rebellion. Towards the end of 1417 he was captured on the Welsh marches, and brought to London. He was taken before the parliament as an outlaw for treason and as one excommunicated for heresy. On December 14th the commons petitioned for his execution; the sentences of the justices and of the archbishop were read the same day; the lords, with the consent of the Duke of Bedford as guardian of the kingdom, sentenced him to execution; and he was drawn, hanged, and burned.[1]

[1] *Rot. Parl*, iv. 107, etc.

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The Lollards.

In the parliament which assembled at Leicester, April 30th, 1414, a new law was passed against the Lollards. This statute invested the secular power with the initiative against heretics, wherever it might be deemed necessary.

A great constitutional reform.

The estates granted tunnage and poundage for three years, while the commons gained a great constitutional boon, for which the parliaments of Henry's immediate predecessors had struggled in vain. In a memorable petition—which, besides its intrinsic importance, is deserving of notice as the earliest instance in which the House of Commons adopted the English language in such instruments—the commons prayed that, "as it hath been ever their liberty and freedom that there should no statute or law be made unless they gave thereto their assent," so "from this time forward there never be no law made" on their petition, "and ingrossed as statute and law, neither by addition nor by diminution, by no manner of term or terms, the which should change the sentence and the intent asked." In reply, the king granted that "from henceforth nothing be enacted to the petitions of his commons that be contrary to their asking, whereby they should be bound without their assent; saving always to our liege lord his prerogative to grant and deny what him list of their petitions and askings aforesaid."[1]

The King's brothers.

In this first session of 1414 the King created his brothers, John and Humfrey, Dukes of Bedford and Gloucester, and his cousin Richard of York, Earl of Cambridge.

Henry claims the French crown.

War with France was resolved upon at a great national council, and in April 1415 Henry laid formal claim to the French crown, in right of his descent from Edward III.

The Southampton plot.

But shortly before the King set out for France, there occurred what is known as the Southampton plot. The Earl of Cambridge, Henry, Lord le Scrope of Masham, and Sir Thomas Grey, of Heton, formed the

[1] *Rot. Parl.*, iv. 22, and Hallam's *Middle Ages.*

design of carrying off the Earl of March into Wales, and there proclaiming him heir of Richard II. The young earl himself is said to have given information of the conspiracy. The traitors were seized; Grey was executed on August 2nd, and Cambridge and Scrope on the 5th, after a trial by their peers. This was the only blood shed by Henry V. to consolidate the House of Lancaster; he did not even disgrace the Earl of March.

Victory of Agincourt.

Although the question of war was no doubt mooted in the Leicester Parliament, it was not until November 1414, when the second parliament of that year met, that the estates granted supplies for the defence of the realm. Having recommended the King first to exhaust the power of negotiation, they voted two tenths and fifteenths, the clergy having already granted two tenths. Henry sailed for France on August 11th, and after one of the most brilliant, as well as one of the briefest and most decisive campaigns on record, he returned to England as the conqueror of Agincourt in November, and entered London in triumph on the 23rd of that month. Parliament was already in session under the lieutenant of the kingdom, the Duke of Bedford. Under the glamour of Henry's wonderful exploits, it granted the custom on wool, and tunnage and poundage for life, anticipated the payment of the money grant of 1414, and voted another tenth and fifteenth. The proceedings against the late traitors, Cambridge, Scrope, and Grey, were recorded and confirmed, and a decree of forfeiture passed.

Parliamentary grants.

Henry next concluded alliances with Sigismund of Luxemburg, King of the Romans, and the Duke of Burgundy; and he also entered into negotiations with the minor powers of the Continent. An expedition on a very large scale was planned for the year 1417. In anticipation, two parliaments sat to vote the necessary aids. The commons, in March 1416, accelerated the grant of a tenth and a fifteenth due at Martinmas; and in the following October they granted two similar aids, payable in the February and November ensuing. The King was empowered to raise a loan on the security thus created, and

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the Bishop of Winchester advanced him 21,000 marks on the customs, while the city of London lent 10,000 on the crown jewels. The clergy granted their tenths in proportion. A powerful fleet was prepared, and, with peace at home, Henry set forth hopefully on his second great expedition. The youthful warrior again triumphed, and after France had been completely subjugated, in May 1420, the peace of Troyes was concluded, by which the French king accepted Henry as his son-in-law, regent and heir. On June 2nd Henry married Katherine, daughter of Charles VI., and on February 1st, 1421, he returned to England.

Conquest of France.

Parliaments of 1419-20.

A parliament had assembled in October 1419, when Roger Flower was for a third time elected Speaker. A fifteenth and tenth were voted, with a supplementary grant of a third of the same sum, and authority was given for a new loan. Joanna, the queen dowager, being accused of an attempt to destroy the King by sorcery, was deprived of the power of conspiring, and relieved from the task of administering her income. Another parliament met on December 2nd, 1420, when Roger Hunt was chosen speaker. It was ordered that petitions were not to be engrossed until they had been sent over sea for the royal assent ; and the statute of Edward III., which secured that no English liberties should be diminished by the king's assumption of a new title, was re-enacted.

Parliament of 1421.

The King opened parliament in person on May 2nd, 1421, and with his own mouth explained the position of affairs, representing it to be necessary still to take action against the Dauphin, who remained in arms. The commons granted a fifteenth, though a petition was presented "filled with sad complaints of the people's poverty and intolerable burden of the war, and fearing that even the conquest of France would prove the ruin of England." But the petitioners were only a very small minority, the nation generally giving its full confidence to Henry.

Henry's last expedition.

Henry again left England on June 10th, 1421, and great indeed must have been the lamentations of his

people if they had thought it possible he might never return. Such proved to be the fact, however. Parliament met on the first day of December after his departure, under the Duke of Bedford, and granted a fifteenth and a tenth. Henry of Windsor was born on December 6th; and in the following May Queen Katherine joined her husband in France. Henry was attacked by a fever, which terminated fatally at Vincennes on August 31st, 1422. The members of his son's council thus recorded his death: "Departed this life the most Christian champion of the Church, the beam of prudence and example of righteousness, the invincible king, the flower and glory of all knighthood, Henry, the fifth since the Conquest, King of England, heir and regent of the realm of France, and lord of Ireland, at the Castle of Bois de Vincennes, near Paris, on the last day of August, in the year of our Lord 1422, and of his reign the tenth: whom succeeded his illustrious son, Henry VI., on the first day of September, in the first year of his age and reign." Official language is apt to exaggerate, but it did not do so in the case of Henry V., whose chivalric character, and grandeur and loftiness of spirit, stamped him as the first king in Christendom.

The new government.

As in the case of Edward I., where a great monarch was succeeded by a weak one, so Henry of Monmouth was succeeded by Henry of Windsor, whose miserable reign witnessed the loss of all the advantages which his illustrious father had gained. Henry VI., as above indicated, was but a babe when his father died. He had been left under the guardianship of the Duke of Bedford, with the Earl of Warwick as the boy's preceptor. According to the account in the *Gesta*, the late king's eldest surviving brother, John, Duke of Bedford, was to rule France; Humphrey, Duke of Gloucester, the youngest brother, was to rule England; and Exeter, Warwick, and Bishop Beaufort were to be governors of the young prince. Warwick became tutor on Exeter's death. Bedford had many of the elements of greatness, being a brave soldier, a skilful general, and a far-sighted politician. A modern

The Duke of Bedford.

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writer, after unusual opportunities for studying his character, affirms that "he was certainly equal, possibly superior, to Henry V."[1] The one great blot on Bedford's character was his unwise and merciless treatment of Joan of Arc. The Duke of Gloucester was a liberal patron of learning and the arts, but his reckless and foolish conduct —which was greatly mitigated by Bedford's judicious influence so long as he lived—made him a danger to the nation.

The Duke of Gloucester.

The King's council.

In its constitutional and parliamentary aspects, the reign of Henry VI. is of no slight significance. Immediately upon the death of the soldier-king, Gloucester assumed his place as vice-ruler; but the lords of the council were tenacious of their rights, while there were many men in parliament who were resolved to uphold the privileges which the estates had exercised during the last two reigns. Gloucester was commissioned to open parliament, and to carry it on and dissolve it, but only "by the assent of the council." The estates met November 9th, 1422, and on December 5th the King, by assent and advice of the lords spiritual and temporal, and by assent of the commons, constituted the Duke of Bedford Protector, and further appointed Gloucester to take his place in his absence. The members of the council were next chosen. Extensive powers were granted to them, which still further limited the influence of the Protector.

Bedford appointed Protector.

Schemes of Bedford and Gloucester.

Bedford now endeavoured to cement the alliances which Henry V. had founded. He concluded an offensive and defensive compact with the Dukes of Burgundy and Brittany, and himself married a sister of Duke Philip. But his policy was thwarted by Gloucester, who married Jacqueline of Hainault. He greatly embarrassed his brother, and it was only by continuous sacrifices of French territory that Bedford could maintain the Burgundy alliance.

Parliaments of 1423-5.

Meanwhile, the English parliament met in October

[1] Stevenson, Introduction to *The Wars of the English in France* (Rolls Series).

1423, and sat till February 1424. It continued the grants of the year 1422, and made peace with Scotland. The boy-king was present at the opening of the parliament of 1425, being carried through the city on a great horse to Westminster. The young Henry sat in his mother's lap while the Bishop of Winchester opened the session.

The Estates and the Dukes.

Although the estates continued the subsidies for three years, and allowed Gloucester to borrow 20,000 marks in connection with his abortive expedition, they inhibited the Duke from further continuing his quarrel with Burgundy, and referred it for arbitration to the Queens of England and France and the Duke of Bedford. A quarrel between Gloucester and Beaufort, which led to riots in London, speedily recalled Bedford to England, and the two brothers entered into a treaty of alliance. But Gloucester would not be reconciled to his uncle Beaufort.

Parliament of Bats.

The parliament of 1426, known as the Parliament of Bats, assembled at Leicester in February. In consequence of the litigious character of the Duke of Gloucester, citizens were forbidden to carry arms, so when parliament assembled, the members of the House of Commons came armed with bats or clubs. For ten days no business could be done, and then Bedford and the peers undertook the task of mediation between Gloucester and Beaufort. A pacification was arranged, and Beaufort resigned the Great Seal, John Kemp, Bishop of London, being appointed in his place.

Gloucester and the Parliament.

Bedford and Beaufort now left England, whereupon Gloucester at once resumed his designs against Burgundy. Bedford sent him a summary threat; and the council resolved that no further conquests were to be attempted without the consent of parliament. On October 13th, 1427, parliament again assembled; but the young King presided in person, and Gloucester was not allowed to open it. During its second session, Gloucester, who had agreed to govern by and through the council, demanded of the lords a definition of his powers as Protector. After deliberation, the lords replied that they could give him no larger authority than that already granted, and

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with this they exhorted and required him to be content. Parliament made liberal grants, and voted a new and complicated form of subsidy. The Earl of Warwick was summoned by the council to perform his office of tutor to the King.

Henry crowned.

Parliament again met on September 22nd, 1429. Henry's coronation took place at Westminster on November 6th ensuing; and as England had now a crowned sovereign, the lords decreed the end of the Protectorate, leaving Gloucester the title of chief counsellor only. A fruitless effort was made to exclude Beaufort from the council, on the ground of his being a cardinal, and he began once more to acquire great influence. Owing to his efforts, the commons voted liberal supplies.

County elections.

An important statute regulating county elections was passed in the parliament of 1430. Hitherto the freeholders had not the sole right of election. Now it was secured to them, though still limited to only a portion of that body. The Act declared that elections were wont to be made "by persons of small substance and no value," and it therefore limited the right of voting to resident holders of free land of the clear annual value of 40*s*. By a supplementary statute, passed two years later, it was enacted that the qualifying freehold should lie within the county. These changes had little effect upon the constitution of the House of Commons, and they were doubtless due to the necessity for grappling with local difficulties, and the exercise of undue influence.

Henry, King of France.

Touching events in France,—the Maid of Orleans was captured and burned as a witch, May 31st, 1431, and on December 17th following Henry was crowned King of France at Paris by Cardinal Beaufort. While Henry was abroad the political Lollards broke out into rebellion; but their leader Jack Sharp was captured and put to death at Oxford in May 1431.

Parliament of 1431.

The parliament of 1431 opened on January 12th. The financial difficulties of the country were now very great; and in addition to fifteenths and tenths, tunnage and poundage, and the continued subsidy, a grant was made

of 20*s.* on the knight's fee of £20 rental, while security was authorised for a loan of £50,000. Stormy discussions on Beaufort's position took place in the council, and upon Henry's return, Gloucester, who was both rapacious and headstrong, changed the King's ministers—Stafford, Bishop of Bath, taking the Great Seal. Beaufort hastily returned to England, and appeared before the parliament which met on May 12th at Westminster. The commons were assured that Gloucester desired peace, while in the lords Beaufort denied the charge of treason levelled against him, and the King declared him loyal. The cardinal then made certain monetary concessions, and for these a statute was passed on the petition of the commons which secured him against all risks of præmunire. Liberal grants of supplies were made, and the subsidy on wool was continued until November 1435. The intricate land and income tax grant of 1431 was annulled. Lord Cromwell was appointed treasurer of the kingdom, and he prepared a complete statement of the national accounts, which showed money to be so scarce that the parliament authorised him to stay all regular payments until he had £2000 in hand for petty expenses. The expenditure was estimated at £56,878, and the sum available for administration was only £38,364, while there were debts amounting to £164,814. Supplies were decreasing, and expenses increasing, so that the outlook was gloomy.

The national finances.

Bedford was now chief counsellor, but the King could scarcely keep the peace between his two uncles. At length Bedford again went to France in 1435, but the defection of Burgundy, which broke up the grand European congress of ambassadors at Arras, broke up also the spirit and the strength of Bedford; and, weary of his troubles, he died on September 14th at Rouen. In him perished not only the best constitutional statesman of the time, but the only diplomatist and soldier who could hope to maintain the English hold upon France.

Death of Bedford.

Yet efforts were made to subdue Burgundy, and parliament voted large grants for the purpose; but the war was desultory and resulted in nothing. In October 1439 a

Progress of events.

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truce for three years was concluded. In 1440 Gloucester brought serious charges against Cardinal Beaufort and Archbishop Kemp, involving public mismanagement, private dishonesty, and treachery both private and public. The release of the Duke of Orleans was made a strong point, Gloucester affirming that it was a virtual renunciation of the kingdom of France; but the council defended the policy of the Act, and passed over the personal charges. Eleanor Cobham, whom Gloucester had taken to wife after his separation from Jacqueline, was tried for witchcraft and indicted for treason in 1441, and sentenced to be imprisoned for life.

Parliament of 1442.

The parliament of 1442 was one of some importance. It granted the subsidies, tunnage and poundage for two years, a fifteenth and tenth, and the alien tax: passing also a vote of security for £100,000, which had now become an annual custom. As a consequence of the Duchess of Gloucester's trial, a petition was granted that ladies of great estate, duchesses, countesses, or baronesses, should, under the provisions of *Magna Carta*, be tried by the peers. The estates ordained that the King's fleet should keep the sea from Candlemas to Martinmas; ordered the statute of Edward III. to be enforced on the royal purveyors; and passed several acts for the promotion of trade and commerce.

The King comes of age.

Henry came legally of age on December 6th, 1442. The cardinal continued to be his chief adviser. William de la Pole, Earl of Suffolk, went over as ambassador to France in 1444, much against his will, and concluded a truce on May 28th. On April 22nd, 1445, Henry married Margaret, daughter of René of Anjou, titular King of Naples and Count of Provence. Suffolk was created a marquis, and thanked by parliament for his services. The royal marriage and the peace were for the time popular, and the advantages of the restoration of commerce with France were appreciated by the nation. The lords were willing to co-operate with the King in securing a lasting peace; and the article of the Treaty of Troyes, which had bound Henry not to conclude peace

His marriage.

with Charles without the consent of the three estates of both realms, was annulled by Act of Parliament.

This was another severe blow to Gloucester's influence; but he now found a more formidable rival even than Beaufort in the Earl of Suffolk, who was at this time practically Prime Minister of England, and remained so until his death. Parliament met at Bury St. Edmund's on February 10th, 1447, the cause being to provide the King with money for a visit to France. William Tresham, a friend of the Duke of York, was elected Speaker. Gloucester, who travelled to Bury some days later, was arrested on the 18th, and five days afterwards was found dead in his bed. The whole subject of his death is wrapped in mystery. It may have arisen from chagrin at the triumph of his enemies, or have been the work of some person who hoped to ingratiate himself with the court; but there were also grounds for believing that it arose from natural causes. Suffolk probably knew more about the affair than any other person, and the council were no doubt responsible for the arrest; but Suffolk was never legally charged with the murder, even after his own fall. The death of Gloucester was soon followed by that of Cardinal Beaufort, who expired on April 11th, 1447. He was ambitious, worldly, and imperious; but he was merciful to his political enemies, and devotedly attached to the King, for whom he made great sacrifices. Beyond these he was a great politician. His policy was one of "peace and reconciliation," and it does not stand condemned because everything went wrong after his death.

The Earl of Suffolk.

Death of Gloucester, and of Beaufort.

After Beaufort's death, Suffolk continued to pursue the policy of peace; but it was destined to bring odium upon him. In the hope of retaining Normandy and Guienne, he surrendered Maine and Anjou in 1448, and secured a truce for two years. But in 1449 the French complained that the truce had been broken, and actively resumed the offensive. The Norman strongholds were retaken one after another, and in 1449-50 Normandy was completely lost, England herself being threatened

Suffolk's policy.

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with invasion. Although Suffolk's policy was unpopular with the people, he had been created a Duke.

Proceedings in Parliament.

Parliament met at Westminster in February 1449, and granted a half-tenth and fifteenth, and continued tunnage and poundage for five years. Then, in consequence of the plague, it was twice prorogued, and assembled again in June at Winchester, when the wool subsidy was continued for four years, and the tax on aliens renewed. At the instance of the commons, the clergy granted a subsidy of a noble from each stipendiary priest in consideration of a general pardon. The King and Somerset were still hoping to preserve Normandy, and men and munitions continued to be sent out. The finances of the country were in a ruinous condition, however; the national debt amounted to £372,000, and the king's annual expenses to £24,000, while his income was only £5000. Archbishop Kemp succeeded Stafford as Chancellor, but things were past his mending.

Impeachment of Suffolk.

At length came the downfall of Suffolk, due mainly to the ill-success of his policy and the national disasters. Private quarrels, such as that between Cromwell and Suffolk, also fanned the flame against the minister; but historians agree that his impeachment was scarcely due to that burning constitutional desire on the part of the commons to punish a treasonable minister which has at other times been witnessed in our history. Foreseeing what was impending, on the first day of the parliamentary session, January 22nd, 1450, Suffolk anticipated the charges against him. The record states that the Duke stood up in the House of Lords, and in simple but effective language required the King "That he might be specially accused, and be allowed to answer to what many men reported of him, that he was an unfaithful subject." He further told the King "That his father and three of his brethren died in his service and that of his father and grandfather, that he himself had served in the wars thirty-four years; and, being but a knight, and taken prisoner, had paid for his ransom £2000; that he had been of the Order of the Garter thirty years, and a

counsellor to the King fifteen years, and had been seventeen years in the wars without returning home. And, asking God's mercy, as he had been true to the King and realm, he required his purgation." The commons having ineffectually demanded the Duke's arrest, on February 7th they produced a specific bill of indictment against him. The bill contained the following eight charges of treason and misprision of treason: That the Duke had conspired with the king of France to depose Henry and place on the throne his own son John as husband of the heiress of the Beauforts; that he had advised the release of the Duke of Orleans, and conspired with him to urge Charles VII. to recover his kingdom; that he had promised the surrender of Anjou and Maine; that he had betrayed the King's counsel to the French; that he had disclosed the strength of the King's resources; that by secret dealing he had prevented the conclusion of a lasting peace; that he had prevented the sending of reinforcements to the army in France; and that he had estranged the king of Aragon and lost the friendship of Brittany. These charges were referred to the judges. Meanwhile, on March 9th, the commons formulated eighteen additional articles, charging the Duke with maladministration, malversation, misuse of his power and influence with the King, the promotion of unworthy persons, the protection of William Taillebois (accused of attempting to assassinate Lord Cromwell), and the sacrifice of the English possessions in Normandy by a treacherous compact with the King of France.[1] On being brought from the Tower to the Parliament House, Suffolk asserted his innocence; but when, later, the chancellor reminded him that he had not put himself on his peerage, he declined to go to trial, and submitted himself wholly to the King, still protesting his innocence. The King ignored the more serious charges, but acting upon the second bill, he banished Suffolk from the realm for five years. The Duke assented to this really to save

[1] *Rot. Parl.*, v. 179, etc.

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the King and council from the indignation against their policy which already existed, and which would have been heightened after the impeachment. The lords, however, lodged a protest against this way of dealing with an accused person; but it was more for form's sake than from a desire to put on record a constitutional Act.[1] Suffolk sailed from England, but was murdered at sea, May 2nd, 1450.

Financial measures.

Parliament met at Leicester on April 29th, 1450. Its financial measures were important. A graduated tax on incomes arising from lands and offices was granted, and a special provision made for the royal household. The fee farms of the crown were to be applied to this purpose to the extent of £5522; and the revenues of the Duchy of Lancaster not yet appropriated were to be devoted to the same object. All grants made since the King's accession were annulled by a general act of resumption, though to this sweeping statute many exceptions and reservations were made. The act, which established a precedent for many succeeding parliaments, arose out of Henry's extravagant liberality.

Cade's rebellion.

Jack Cade's rebellion broke out on June 1st. This rising was due to misrule at home and failure abroad, to the excessive taxation of the people, the interferences with county elections, and the peculiar oppressions of the commons of Kent, who were now said to be threatened with the King's vengeance for the murder of the Duke of Suffolk off Dover. After several successes the malcontents were defeated on London Bridge, and subsequently pardoned; but as Cade proceeded to plunder and ravage in Kent, a price was set on his head, and he was captured and mortally wounded, dying before he reached London. Other disturbances broke out, but they were speedily suppressed.

The Dukes of York and Somerset.

From this period, and until his death, Richard, Duke of York, became the most conspicuous figure upon the national stage. As regent of France and lieutenant of

[1] *Rot. Parl.*, v. 182; and the *Paston Letters*, edited by J. Gairdner, with critical and historical introductions.

Ireland he had been successful, and his general policy was superior to that of his rival, Somerset. The two dukes were the King's nearest kinsmen, Somerset being the male representative of John of Gaunt, and York representing the descendants of Edmund of Langley. York, also, through the Mortimers, represented the line of Lionel of Clarence. If an heiress had a right to transmit her royal claim, York had a prior right to the crown; but no such case had yet occurred. On the other hand, Somerset's claim was strong if the inheritance after Henry VI. belonged to the male heir of Edward III.; while the lady Margaret had also her special claims as heir general of John of Gaunt. The nation generally looked towards the Duke of York, not only as having the best claim to the throne, but as being the soundest of living administrators. For a time York put his own claims in abeyance, and only appeared as the champion of order and the reformer of abuses.

York and the Parliament.

In the parliaments of November 1450 and January—May 1451, York made desperate attempts to overthrow Somerset, and seriously shook his position, though he did not accomplish his fall as he did that of some of his friends. In the commons a proposition was made by Thomas Yonge, the member for Bristol, to declare the Duke of York heir to the crown. It met with considerable support in the Lower House, but was resisted by the King and the lords. Jack Cade and his followers were attainted, the act of resumption was again enacted, and supplies were granted for the defence of the realm. Guienne and Gascony, however, were lost in 1451. An anti-Yorkist parliament met at Reading in March 1453, and made liberal grants. Henry was seized with mental derangement; but while this event placed the queen and the Duke of York in direct rivalry for the regency, the birth of an heir to the house of Lancaster seemed completely to crush all York's hopes of the succession. He drew to his side, however, the Duke of Norfolk and the Nevilles.

A very high-handed act was perpetrated by York

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in the autumn of 1453. On an action for trespass he procured the arrest and imprisonment of the Speaker, Thomas Thorpe, a knight of the shire for Essex and a baron of the Exchequer. Thorpe was strongly opposed to the Yorkists. His arrest was certainly in contempt of the privilege of parliament, and on the meeting of the houses in February 1454, the commons demanded his release. The question of privilege was referred to the judges, who denied that they had power to settle such high matters; and as the lords refused to release Thorpe, the commons were obliged to elect another speaker.

Arrest of the Speaker.

York appointed Protector.

The illness of the King continuing, and his old and faithful servant, Cardinal Kemp, dying at this juncture, on March 27th, 1454, the lords appointed the Duke of York protector and defender of the realm. With the assent of the commons an act was passed confirming him in this position until the prince came of age, or as long as the King pleased. The Duke promised to exercise his authority in a constitutional manner, as chief of the royal council. His brother-in-law, the Earl of Salisbury, was given the Great Seal; while under the duke's direction, Thomas Bourchier, Bishop of Ely, was elected Archbishop of Canterbury. Parliament effected certain financial changes, but the new administration attempted no extreme measures. Early in 1455 the King recovered, and Somerset, who was in prison, was released, he and York being bound over to accept an arbitration. But the latter duke—whose partisans were no longer summoned to the ordinary councils—was not satisfied, and with an army marched on London. At St. Alban's, on May 22nd, 1455, was fought the first battle of the Wars of the Roses. The Yorkists were completely victorious; Henry was taken prisoner, and the Duke of Somerset was slain.

Battle of St. Alban's.

A temporary peace

The next two years saw the second illness of the King and the second protectorate of the Duke of York. But Henry again recovered, and the land for a time enjoyed comparative peace. Parliament met in 1456, but its acts were of little importance, the few statutes enrolled being chiefly noteworthy as the last attempts at legislation made

during the reign. The Lancastrians and the Yorkists had their skirmishes inside and outside the council; but a grand pacification took place at St. Paul's on March 25th, 1458. The pacification was but a name, however, and both parties prepared to renew the struggle.

Parliament of Coventry.

A parliament was called to meet at Coventry, November 20th, 1459, to which the Yorkist lords were not summoned On the nomination of the Lancastrian leaders, the knights of the shire were returned, but with such haste that the sheriffs had to petition for indemnity, while complaints were afterwards made that the members were returned without due election, and even in some cases without the proper form. Nevertheless, the court party was successful, and the parliament assembled. Thomas Tresham, member for Northamptonshire, was elected Speaker, and the chief business of the session was the attainder of the Duke of York and his friends. The bill of indictment referred to the Duke's connection with Cade's rebellion, his forcingh imself upon the King's councils, his disloyal practices in parliament, his attempt at rebellion in 1452, his breach of the oath taken at St. Paul's in the same year, his attack on the King at St. Alban's, his breach of the oath at Coventry in 1457, and at St. Paul's in 1458 ; his responsibility for the battle of Blore Heath, and his continued resistance to the King at Ludlow and elsewhere. The young Earls of March and Rutland, the Nevilles, Lord Clinton, Oldhall, the Speaker of 1450, and the Countess of Salisbury, were the other principal persons attainted. They were adjudged to suffer the penalties of high treason, but the King reserved his prerogative of pardon.

The Duke of York attainted.

York claims the crown.

The Yorkist lords now planned another rising, and issued a manifesto condemning the policy of the King's advisers. Henry again went against his foes, but he was deserted by Lord Grey of Ruthyn, the leader of his vanguard, and severely defeated at the battle of Northampton, July 10th, 1460. A parliament met at Westminster on October 7th ensuing, when the acts of the parliament of Coventry were repealed, and the Duke of York formally

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asserted his right to the throne as heir of Edward III. through Lionel of Clarence. The King ordered a search, but the judges declined to give an opinion; the lords raised five objections, which were answered by the Duke; and a compromise was finally devised, with the approval of the lords, by which Henry was to be king for life, and was to be succeeded by the Duke. The parliament which endorsed this compromise contained few of Henry's adherents, and he was compelled to submit.

Death of the Duke.

At the battle of Wakefield, December 29th, 1460, the Yorkists were completely overwhelmed. The Duke of York was killed, and his son the Earl of Rutland was after the battle cruelly slain by Lord Clifford, while the Earl of Salisbury was taken prisoner and beheaded. But soon afterwards, Edward, the young Earl of March, now Duke of York, inflicted a crushing defeat on the Earl of Pembroke, the King's half-brother, at Mortimer's Cross. Edward and Warwick entered London on February 28th, 1461, and on the following day the citizens hailed the Duke of York as king. On March 4th he proceeded to Westminster, where he seized the crown and sceptre of the Conqueror, and was proclaimed king under the title of Edward IV. The sanguinary battle of Towton destroyed the last hopes of the Lancastrians, and Edward was crowned at Westminster on June 28th.

Edward proclaimed king.

Causes of Henry's fall.

The House of Lancaster fell because it was weak and unpopular; and parliament, in accepting Henry's successor, did but emphasise the wishes of the nation. Henry VI. reaped the fruits of a very unfortunate policy, and although he endeavoured to carry on the work of governing England in concert with a free Parliament—which was the great Lancastrian constitutional principle—he failed from other causes, and, without any constitutional impeachment, was dethroned. The loss of our foreign possessions, the mischievous influence of the queen, distrust of the people, and the unpopularity of the ministerial policy—all these things sapped the Lancastrian vitality, and gave an irresistible impulse to the claims of Duke Richard, and his successor the new king.

BOOK IV.

THE HOUSE OF YORK.

1461 to 1485.

CHAPTER I.

THE REIGN OF EDWARD IV.

Edward IV.

The Wars of the Roses threw the whole nation out of gear, and parliament shared in the general demoralisation. Nevertheless, the first sovereign of the House of York, who was a pupil of Sir John Fortescue, that great master of the principles of constitutional government, made some efforts to govern justly, and to enforce the law. The King was young, handsome, and popular. He had been successful in the field, and ascended the throne with strong hopes of ensuring peace for his distracted country.

His first Parliament.

The meeting of Edward IV.'s first parliament was delayed in consequence of the disturbed condition of the Scottish border until November 4th, 1461. The peerage had suffered serious losses—though the diminution was not great, perhaps, as compared with the parliament of 1453. Forty-four peers were summoned, and new creations were speedily announced, while the King's brothers were made Dukes of Clarence and Gloucester.

The King's title.

Bishop Neville, the chancellor, opened parliament; and Sir James Strangeways, knight of the shire for Yorkshire, was chosen Speaker. On November 12th the commons demanded the punishment of the King's enemies and the declaration of his own title. Their petition prayed that the alienations of royal territory under the late dynasty might be cancelled, and an act

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of resumption passed. The history of the compromise made in 1460 was recapitulated, and its repeal demanded, Henry being charged with breach of the agreement. Passing over Henry as a usurper and a traitor, Edward was regarded as succeeding to the rights of Richard II. But before the petition was transformed into an Act of Parliament, the King's advisers inserted numerous clauses saving the rights which had been created during the Lancastrian reigns and since Edward's accession. In addition, a statute was passed declaring valid the judicial acts of the late dynasty.

Attainder of Henry.

A bill of attainder was passed against the deposed king, Queen Margaret, and their partisans. Henry was found guilty of high treason, and condemned to forfeit the Duchy of Lancaster, his special patrimonial estate, which was henceforward attached as a separate provision to the crown. Margaret and her son, fourteen lords, and many other persons were also condemned to forfeiture; while the proceedings against the victims of the Revolution of 1399, including Richard of Cambridge, the King's grandfather, the Earl of Salisbury, and Lord le Despenser, were reversed. Edward issued an order in this parliament against liveries, maintenance, and gambling, and a statute was passed referring indictments taken in sheriff's tourn to the justices of the peace. When the houses were prorogued, the King thanked them for their efforts in restoring his dynasty and in avenging his father, and he promised to devote himself sincerely to the public service. The new rule certainly began in moderation, but it lamentably failed to keep up its character.

Parliament of 1463.

In the midst of foreign intrigues and desultory warfare on the part of Margaret, a new parliament met on April 29th, 1463. With various prorogations it continued until 1465. An act of resumption was passed, as well as bills of attainder against those who incurred the guilt of treason while the parliament ran its course. A money grant of £37,000 was made for the defence of the realm, but the form of the grant was afterwards changed, and it was ordered to be levied under the name of a fifteenth

and tenth. To show the strength of Edward's position after the battle of Hexham, on January 21st, 1465, the commons granted tunnage and poundage and the subsidy on wool to the King for his life. At the same time several commercial statutes were passed, which gave an impetus to the now reviving trade of England.

Edward's reign.

As Hallam has observed, the reign of Edward IV. soon developed into a reign of terror. The King did not feel secure, and his marriage with Elizabeth, widow of Lord Grey, or Ferrers, of Groby, and daughter of a Lancastrian lord, Richard Wydville, Lord Rivers, gave umbrage to the Nevilles and others. Besides the queen's faction, other factions arose, and the realm was in a constant state of ferment. To the parliament which met at Reading, May 12th, 1468, Edward proposed a war with France, and the commons voted two tenths and fifteenths. But in 1469 the Lancastrians renewed the civil war, and there was general discontent throughout the country, Edward's popularity declining. There was a rising of sixty thousand commoners under Robin of Redesdale, who complained of the King's favouritism, the excessive taxation, abuses of purveyance, etc. Lords Pembroke, Rivers, and Devonshire were taken and beheaded; and Edward, having been a prisoner to Archbishop Neville, was obliged to make terms with Warwick. But early in October 1470 Edward fled to Flanders, and Henry VI. was temporarily restored to the throne.

His popularity declines.

Henry temporarily restored.

A parliament was summoned in Henry's name for November 26th, and it appears to have met, though there is no formal record of its proceedings. Thirty-four lords were summoned to this parliament. A settlement of the crown was made upon Henry and his son, with remainder to the Duke of Clarence, if the Lancastrian line failed. All the attainders passed in Edward's parliaments were repealed. Edward himself was declared a traitor to his country, and had all his goods confiscated, and the Earl of Warwick was made Protector of the Kingdom.

Edward again triumphs.

But Edward soon afterwards returned to England, and having gained London marched against Warwick, whom

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he defeated with great slaughter at Barnet, April 14th, 1471. The "king-maker" and his brother were slain. Then, three weeks afterwards, May 4th, Edward as signally defeated Margaret at Tewkesbury. The young prince was killed, and his mother taken prisoner. On May 21st, Edward entered London in triumph, and the same night Henry VI. expired in the tower, many regarding the Duke of Gloucester as his murderer.

Parliament of 1472.

Edward IV. now seemed tolerably secure, and no parliament was summoned until October 1472. When it assembled it proved very amenable to the King's wishes. A force of 13,000 archers was voted, to be paid at the rate of sixpence per day for a year; and lords and commons, by separate instruments, directed that a new and complete tenth of all existing property should be levied to meet the cost. As this could not be collected, in 1473 the old-fashioned fifteenth and tenth were voted.

Benevolences.

In this same year Edward inaugurated a new method of extracting money from his subjects, without consent of parliament, under the name of benevolences. They took the place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders,[1] but they were every whit as objectionable. No formal complaints appear on the parliamentary records concerning the benevolences, but they were undoubtedly resented as illegal.[2] This method of extortion was "worse even than the forced loans and blank charters of Richard II." Parliament passed an act of resumption, and in July 1474 voted a tenth and fifteenth, with an additional sum of £51,147. Payment of this was accelerated, and the estates were dissolved in March 1475, after granting another fifteenth and tenth. Of great measures there were none in this parliament; but there were various mercantile enactments, private petitions, acts of settlement of estates, questions of Parliamentary

[1] Hallam's *Middle Ages.*

[2] Hall states that Edward "conceived a new device in his imagination," and that he sold his kisses for a benevolence of £20.

privilege, and attainders and reversals of attainders. Sir John Fortescue was pardoned on condition that he refuted his own arguments in favour of the Lancastrian king. Dr. John Morton, who had been a faithful Lancastrian, was likewise pardoned, and not long afterwards was made Master of the Rolls, and subsequently Keeper of the Great Seal.

Parliament of 1478

No further parliament met until January 16th, 1478. In the interim Edward had visited France, and had shamefully sold his claims over that country for 75,000 crowns and a promised pension of 50,000. At home the court was disturbed by the jealousies of the Dukes of Clarence and Gloucester. Chiefly through the influence of Gloucester it was determined to crush Clarence. Accordingly, when the parliament of 1478 assembled, he was attainted of treason, chiefly on the ground of his complicity with the Lancastrians in 1470. The commons approved the bill, and Clarence was condemned to death. The manner of his end is uncertain, though it was popularly reported that he was drowned in a butt of malmsey wine. The estates made a formal declaration of the nullity of the acts of the Lancastrian parliament; a few attainders were reversed, and a number of commercial statutes passed.

Death of Clarence.

Edward's last Parliament.

For five years from the dissolution of this parliament constitutional history was a blank. The next parliament summoned, which proved to be Edward's last, assembled on January 20th, 1483. In view of war, the commons granted for the defence of the realm a tenth and a fifteenth, reserving £6000 to be bestowed on decayed towns. They also granted a regular subsidy to be levied on all strangers, as well denizens as others. In return for these grants, the King commanded that the statutes of Westminster and Winchester, and all the statutes concerning weights and measures, labourers, beggars, and vagabonds, should be proclaimed and duly observed. An act of resumption was passed, and a yearly sum of £11,000 was settled by parliament for defraying the expenses of the royal household. A very large grant of

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The Reign of Edward IV.

castles, towns, lordships, fee-farms, etc., was made to the Duke of Gloucester.[1]

Boroughs summoned.

In this reign, Grantham in Lincolnshire and Ludlow in Shropshire were summoned to send members to parliament. Plymouth, Gatton, and Westbury were omitted, but Ilchester was summoned. Wenlock in Shropshire was empowered by charter to send one member to parliament, November 29th, 1478, and this was the first instance of a borough receiving the privilege of sending a delegate to parliament by charter.

Edward's death and character.

Edward IV. expired somewhat suddenly, on April 9th, 1483. Though beginning well, he had reigned with pitiless severity, and during his rule not a single statute was enacted for the redress of grievances. Parliament also but too servilely acquiesced in the King's reckless application of his exceptional legal and civil powers. No fewer than one hundred and fifty-one peers, knights, and prelates were declared guilty of treason during his reign, while according to Sir John Fortescue, nearly one-fifth of the whole kingdom came into Edward's hands by forfeiture. The death of the Duke of Clarence was another serious blot on Edward's character, for it appears that his brother was only guilty of levity and rashness. Thomas Burdett, the Duke's servant, was also found guilty of treason without sufficient grounds, and put to death before his master. As a man, Edward was courageous and accomplished ; but these qualities were overshadowed by his dissoluteness, cruelty, and bloodthirstiness. The student of constitutional history can find little in his reign to ponder over with satisfaction.

[1] A curious sumptuary law touching excess of apparel was passed in this parliament. All former statutes were repealed, and the kind of apparel for temporal men of every degree and estate was now regulated. It was ordered that none under the degree of a lord, except certain persons particularly named, should wear any gown or mantle, unless it were of such a length that a man, standing upright, should have his buttocks covered.

CHAPTER II.

EDWARD V. AND RICHARD III.

Edward V.

THE young Edward was king but for a very brief period, reigning only from April 9th to June 25th, 1483. He did not live to see his coronation, and during his short rule no parliament met, though one was summoned. At a meeting of the council in May, Duke Richard was proclaimed Protector of the Kingdom. He was even now formulating plans for advancing his claim to the crown, and issued a writ of supersedeas to prevent the assembling of parliament, which had been called for June 25th. He next seized Lord Hastings, who had been summoned to attend the king, and beheaded him without trial.

York takes the crown.

The Duke's right to the crown was publicly declared on June 22nd at St. Paul's Cross, by a preacher, Dr. Shaw, and two days later it was asserted by the Duke of Buckingham at Guildhall. The crown was offered to Richard at Baynard's Castle on the 25th, when the Protector received a body of peers and others, "many and divers lords, spiritual and temporal, and other nobles and notable persons of the commons," who in the name of the three estates presented to him a roll of parchment. This roll, besides containing the invitation to accept the crown, set forth the ancient prosperity of England, its decay and imminent ruin owing to the influence of false counsellors ; and it showed how since

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the pretended marriage of Edward IV., the constitution had been in abeyance, laws divine and human, customs, liberties and life, had been subjected to arbitrary rule, and the noble blood of the land had been destroyed. The marriage was asserted to have been the result of sorcery, to have been illegal and informally celebrated, Edward being already bound by a pre-contract of marriage to the Lady Eleanor Butler: the children of the adulterous pair were denounced as illegitimate; and, as the off-spring of the Duke of Clarence were disabled by their father's attainder from claiming the succession, the Protector himself was the undoubted heir of Duke Richard of York, and of the crown of England. The petitioners had therefore chosen him king, and prayed him to accept the election, promising to be faithful to him, and imploring the Divine blessing upon the undertaking.[1] Richard accepted the nomination, and appearing in Westminster Hall on the 26th, declared his right as hereditary and elected king. From this date the reign of Edward V. ceased, and it is generally believed that the youthful king and his brother Richard were murdered not long afterwards in the Tower at their uncle's instigation.

Character of Richard III.

Richard III. was able, crafty, and unscrupulous. While popular before his accession, he was greatly mistrusted after that event. He was prepared to go any lengths in maintaining his claims, and was impervious to such ennobling sentiments as affection, mercy, and gratitude; but though he appears in the blackest colours in history, he was no worse than his brother Edward, while he was certainly equal to him in capacity. As his reign began with violence, so was it brief in character, and he perished by the sword. Crowned on July 6th, in the course of three months he was called upon to defend his throne.

His only Parliament.

Richard III.'s first and only parliament met on January 23rd, 1484. William Catesby, one of Richard's strongest partisans, was elected Speaker. The King's

[1] *Rot. Parl.*, vi. 238, etc.

title was one of the first questions dealt with. A bill was introduced which set forth the circumstances attending the invitation to Richard to assume the crown; and with regard to the petition of invitation, and all the statements pertaining thereto, it was proposed to ratify, enrol, record, approve, and authorise them in such a way as to give them the force of an act of the full parliament. The King's title was declared to be perfect in itself, as grounded on the law of God and nature, the customs of the realm, and the opinion of the wise; but to enlighten the ignorance of the people, and because a declaration of the three estates of the realm in parliament gave faith and certainty, it was decreed that Richard was king as well by right of consanguinity and inheritance, as by lawful election, consecration, and coronation. The crown was accordingly secured to him and the heirs of his body. The bill was carried down from the lords to the commons, and received the approval of the latter; after which, with the assent of the lords, all the matters contained in it were pronounced to be true and undoubted, and the King gave the measure his assent. The proceedings of the June council were thus transformed into law, parliament giving the force of a statute to many statements which were certainly the reverse of the truth.

The King's title.

Then the recent conspirators were punished. Acts of attainder were passed against the late Duke of Buckingham, and against the Earls of Richmond and Pembroke, the Marquis of Dorset, and a great number of knights and gentlemen, who were condemned to the penalties of treason. The Bishops of Salisbury, Exeter, and Ely, who had promoted the rebellion, were deprived of their temporalities. By a separate act the Lady Margaret of Richmond was attainted, while the grants made to the Duke and Duchess of Exeter were resumed, and the king was empowered to make grants from the property of the attainted. Finally, grants of tunnage and poundage, and the subsidy on wool, were made to Richard for his life.

Acts of attainder.

Fifteen statutes were passed by this parliament, but only one was of decided constitutional importance. This

Benevolences abolished.

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was the act abolishing the unconstitutional practice of exacting benevolences. They were stigmatised as new and unlawful inventions, and the hardships to which many worshipful men had been subjected by them were detailed. Several of the other acts passed related to trade and commerce: one annulled the grants to Queen Elizabeth; and four were intended to remedy or regulate legal proceedings in the matters of bail, juries, fines, and the action of the court of pic-powder—a court of record incident to every fair and market, and deriving its singular name from the dusty feet of the suitors. Another act divested the King of the property in lands of which he was enfeoffed or seised to uses, and vested the estate in the co-feoffees or in the *cestui que use*, thus anticipating the general action of the statutes of uses. A still further act forbade secret feoffments, which were a natural outcome of the civil wars. Some portions of the above legislation continued on the statute-book down to the nineteenth century.

Other statutes.

Death of Richard.

At the close of 1484, the Earl of Richmond, who was in France, prepared to invade England; and in order to withstand him, Richard resorted to those very benevolences which one of his statutes, in very admirable language, had proscribed. Henry landed at Milford Haven, and advanced as far as Bosworth, where he encountered Richard on August 22nd, 1485. Northumberland and the Stanleys deserted to Richmond, and in the fierce battle which ensued Richard was slain.

A constitutional epoch.

The overthrow of the last of the Plantagenet race of kings marks a distinct period in our constitutional history. Modern England now succeeds to mediæval. A period of internal convulsion, such as that of the Wars of the Roses, is not favourable to constitutional advances. We see the Lancaster dynasty unable to expand, or even to maintain, the constitution, while under that of York it was almost ignored. But it could not be suppressed or destroyed, and notwithstanding the baldness of our parliamentary history during the Wars of the Roses, the nation had not surrendered its rights,

for when Richard III. was invited to assume the crown, this passage occurred in the address presented by the memorialists: "For certainlye wee be determined rather to adventure and committe us to the perill of oure lyfs and jopardye of deth, than to lyve in suche thraldome and bondage as we have lyved long tyme heretofore, oppressed and injured by extorcions and newe imposicions agenst the lawes of God and man, and the libertee, old policee, and lawes of this realme, wheryn every Englishman is enherited."

Principle of government.

The cardinal principle upon which constitutional government was already based is admirably stated by Sir John Fortescue, Chief Justice of the King's Bench under Henry VI. "A king of England," he lays down, "cannot at his pleasure make any alterations in the laws of the land, for the nature of his government is not only regal but political. . . . He can neither make any alteration or change in the laws of the realm without the consent of his subjects, nor burthen them against their wills with strange impositions; so that a people, governed by such laws as are made by their own consent and approbation, enjoy their properties securely, and without the hazard of being deprived of them by the king or any other."

The later Plantagenets.

But the constitutional spirit too often slept under the later Plantagenet kings. The baronage, once so powerful, had been decimated by war and internal feuds, and the crown had confiscated vast estates. The church was at a low ebb, morally and intellectually, and it bent its knee before the sovereign, so that there was no check upon the kingly power. True, the commons had advanced in numbers, wealth, and intelligence; but the number of electors was reduced by legislation, and those who remained were under the influence of the nobles. The inhabitants of the cities and boroughs were careless of their privileges, allowing them to fall into desuetude, and the corrupt system of nomination boroughs acted as a blight upon constitutional progress. The prerogatives of the crown were asserted more strongly than ever

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under these discouraging circumstances, and for a period of two hundred years, from the reign of Henry VI. to that of Elizabeth, the Free Parliaments of England were in abeyance.

Constitutional privileges gained.

Yet, notwithstanding the constitutional work that remained to be performed, we must not lose sight of the actual advantages already gained during a period of four hundred years. "The Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the concession of a great charter of liberties. Privileges, wrested from one faithless monarch, are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous, during the long reign of Henry III. With greater ambition and greater abilities than his father, Edward I. attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still more important limitations. The great council of the nation is opened to the representatives of the commons. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to assert that the constitution had attained anything like a perfect state in the fifteenth century; but I know not where there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne." [1]

The estates of the realm.

I shall take the opportunity afforded by the close of the line of the House of York to consider the composition of the various estates of the realm, and to glance at the parliamentary and political usages which had been

[1] Hallam's *Middle Ages.*

in vogue antecedent to, or were actually in operation at, the end of the fifteenth century. The facts shall be collated from the best constitutional authorities. With respect to the three estates of the realm, the lords spiritual formed for a time the most powerful body. In the councils of the Saxon and Norman kings, the archbishops and bishops held a prominent position, and they were gradually reinforced by priors and abbots, until the latter were swept away by Henry VIII. The spiritual peers sat with the temporal in the same assembly, and were usually the more numerous body. The lords temporal comprised five dignities. Taking them in the order of their rank, the duke came first. The ducal order was not created until the time of Edward III., when that sovereign conferred it upon his son, Edward the Black Prince. The title of marquis was the second in order, but the first English creation only dated from Richard II. The earl came next, and this official title was known to both the Danes and the Saxons. After the Conquest, this dignity was considered equivalent to that of count in foreign states; but the foreign title of count has since greatly degenerated beneath that of an English earl. The fourth rank in the peerage was that of viscount, the title being introduced into England by Edward II. Lastly came the baron; but although lowest in degree, this title was the most ancient. These five orders have never been increased, and they form to this day the constituent elements of the House of Lords.

Lords spiritual and temporal.

The temporal peers were formerly few in number. In the fifteenth century those summoned to parliament seldom exceeded fifty; to the first parliament of Henry VII. only 29 were summoned; 59 is given as the number at the death of Queen Elizabeth; but on the death of William III. the number had grown to 192. When Queen Victoria came to the throne, the peers numbered 456; and since then the total has reached upwards of five hundred. Speaking generally, the peerage has always been hereditary; but a few life peerages were created between the reigns of Richard II. and

The peers.

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Henry VI., and several ladies received life peerages between the reigns of Charles II. and George II. Four hundred years had elapsed since the creation of a male life peer entitled to sit in parliament, when Queen Victoria created Sir James Parke, the distinguished lawyer, Lord Wensleydale. But exception was taken to the Act, and a new patent was made out, by which Lord Wensleydale sat as an hereditary peer. Life peerages, however, were revived in 1876, when three lords of appeal were created barons by statute, with the right of sitting and voting in the House of Lords so long as they continued in their judicial office.

The Commons.

The commons were always a much more numerous body than the lords. There were some 275 members in the reign of Edward I., 250 in that of Edward III., and 300 in that of Henry VI. Parliament added 27 members for Wales, and 4 for the county and city of Chester in the reign of Henry VIII., and 4 for the county and city of Durham in that of Charles II. Between the reigns of Henry VIII. and Charles II. 130 members were also added by royal charter. Since the time of the second Charles nearly 200 members have been added, so that the house, as now constituted, consists of 670 members.

Parliamentary procedure.

Many of the rules and forms of parliamentary procedure are very ancient, and these are substantially the forms which have to do with the actual legislative machinery. The rules of debate, however, have been fluctuating, and other points of procedure have sprung up as the result of parliamentary exigencies. But freedom of debate and activity of discussion have not necessarily called new rules into being, and "there can be little question that debates were as fierce and as tedious in the minority of Henry VI. as in the troublous days of Charles I. As early as the seventeenth century the speeches of parliamentary orators were addressed to the nation at large; although the publication of the debates was still in the distant future."[1] The time of

[1] Hallam's *Middle Ages.*

the meeting of parliament varied in many of the early reigns, and it was summoned spasmodically; but in the fourteenth century it was ordained that parliaments should be held annually.

The Home of Parliament.

As to the place of meeting, notwithstanding the provincial assemblies, from the days of Edward the Confessor Westminster was the recognised home of the great council of the nation as well as of the king. Henry III. rebuilt Westminster Abbey and added largely to the palace of Westminster, and from his time the assembling of the parliaments at Westminster became a recognised custom, although circumstances sometimes led to the estates being summoned to meet elsewhere. The principal portions of the ancient palace, which were destroyed in 1834, formed a strange congeries of towers, halls, churches, and chambers. Many of our early monarchs—including Edward the Confessor, William Rufus, Stephen, Henry III., Edward I., Edward III., Henry VII., and Edward VI.—did much towards beautifying or adding to the original structure.

Issue of writs.

The king in council determined the day for the meeting of parliament, and writs were then issued from the royal chancery returnable to the parliament itself. Variations frequently occurred in the writs. To the sheriffs was entrusted the execution of the writs, the elections being made in the county courts, and the writs being returnable in forty days. In the case of the city and borough elections, the sheriffs' duties were well defined, and the electoral bodies were more clearly constituted and the factors more permanent than in the case of the counties. Down to nearly the close of the sixteenth century the House of Commons had not asserted its right to determine the validity of elections. The king took direct cognisance of complaints until 1410, when the judges of assize were authorised to do this by statute. When the session of parliament was over, the members went down to their constituents and gave them a full and public account of the proceedings. The king almost always opened parliament in person, and absent members were

CHAP. II. Edward V. and Richard III.

fined for neglecting to appear in their places. The time for meeting for the despatch of business varied. In 1376 and 1378 the commons met at eight a.m.; in 1397 and 1401 at ten; in 1406 at eight; and in 1413 at seven. They did not believe in turning the night into day. The commons usually deliberated in the Chapter House of Westminster Abbey, but sometimes also in the Refectory.

Hindrances to constitutional progress.

What, thus far, is the burden and significance of our parliamentary history? Warring elements had been at work to hinder the growth of constitutional principles from the landing of William of Normandy down to the death of the last Plantagenet king. Despotic sovereigns, an arrogant church, a feudal baronage had all played their part in our annals; but the people, those who were really the backbone of England—the farmers, the merchants, the artisans—had as yet had little to do with the making of the constitution. Some progress had doubtless been achieved, but even the borough representation which had been secured was largely a fiction. Town and country interests were to a great extent localised; and those whose vision took a wider range, and who looked ultimately for a true parliament of the people, with a real government by the people, were few in number. Villenage had by no means ceased in the land, and at the time of the Reformation, and even later, there were whole families who were neither more nor less than absolute slaves. With the advent of the Tudors, we come to a period of transition, when education and the printing press were to become powerful levers in the elevation of the masses. Under the Normans—largely even under the Plantagenets—the average inhabitant of these realms was uncultured, destitute of privilege, and the sport of contending factions. But the time was approaching when the manacles of ignorance and despotism were to be struck off, and he was to assert those liberties which have become, though not without repeated struggles, the heritage of every Englishman.

BOOK V.

PARLIAMENT UNDER THE TUDORS.

1485 TO 1603.

CHAPTER I.

HENRY VII. AND HENRY VIII.

Henry VII.

Our first Tudor king, notwithstanding the flaws in his title, firmly established his sovereignty, and successfully implanted the new dynasty. No monarch ever ascended the throne amid greater popular rejoicings, and, in some respects, his reign was one of the most illustrious in our annals. Yet, in the outset, Henry VII. felt anything but secure, for the Lancastrian claim had never been clearly proved by Henry IV., and although Parliament had frequently supported the House of Lancaster, it had also been known to support that of York. And granting even that the Lancastrian title was good, Richmond could claim only from the illegitimate branch of Somerset. His wisest policy, therefore, was not to challenge disputed points of succession, but to strengthen his actual possession of the crown.

His character.

Henry VII. gave promise of a contemplative rather than an active career, and, to the last, his mind remained imaginative and adventurous. "He dreamed of crusades; he dwelt with delight on the legends of Arthur, which Caxton gave to the world in the year of his accession. His tastes were literary and artistic. He was a patron of the new printing press, a lover of books and of art. The chapel at Westminster which bears his name reflects his passion for architecture. But life gave Henry little

CHAP. I. Henry VII. and Henry VIII.

leisure for dreams or culture. From the first he had to struggle for very existence against the dangers that beset him. A battle and treason had given him the throne: treason and a battle might dash him from it. His claim of blood was an uncertain and a disputable one, even by men of his own party. He stood attainted by solemn Act of Parliament; and though the judges ruled that the possession of the crown cleared all attaint, the stigma and peril remained."[1]

The King's title.

These considerations caused Henry to act with decision. While he was resolved upon espousing Elizabeth of York, thereby uniting the two great rival houses and consolidating his own power, he was equally resolved not to do this until Parliament had constituted him lawful King of England in his own right. He assumed the royal title at Bosworth on August 22nd, 1485, was crowned in London October 30th, and summoned his first parliament to meet at Westminster on November 7th. Few in number were the parliaments of this sovereign, and the earliest of them was by far the most important. It was called to arrange the settlement of the crown. Henry's title rested upon three grounds—his promised marriage with Elizabeth; his descent from the House of Lancaster; and the right of conquest. The first claim was not a strong one, neither was it agreeable to the prejudices of himself and his Lancastrian adherents; while the third was both objectionable and unconstitutional. "Therefore," says Bacon, "he rested on the title of Lancaster in the main, using the marriage and the victory as supporters"; and in the act of settlement it was merely enacted that "the inheritance of the crown should be, rest, remain, and abide in the most royal person of the then sovereign lord, King Henry VII., and the heirs of his body lawfully coming."

His earliest acts.

The attainders of Henry VI., Queen Margaret, and the Prince of Wales, in the 1st Edward IV., and the attainders of many of the King's friends, were reversed.

[1] Green's *History of the English People.*

On the other hand, an act of attainder was passed against Richard III., the Duke of Norfolk, and his son, the Earl of Surrey, the Lords Lovel, Zouch, Ferrers, and about twenty others. All grants made by the Crown since the 34th of Henry VI. were resumed; and a general pardon was issued in the King's name to all the adherents of the late usurper. Parliament granted the usual tunnage and poundage, and the subsidy on wools, etc. The great income which from various sources accrued to the Crown rendered Henry, in a large degree, independent of the parliament which had created his title to the throne, and particularly of the House of Commons, whose great influence had hitherto been principally derived from the necessity for extraordinary aids to support the expenses of the king. In the Lords House of Parliament his power was always predominant, the number of temporal peers during his reign being about forty only (in the early part of his reign not so many), the spiritual lords consequently forming always the majority of the House. The object of Henry's policy was to destroy the influence of the great nobility, already very much curtailed. The result was that Henry VII., and his son after him, were largely independent of the two Houses of Parliament, which both these sovereigns used as the instruments of their will.

Settlement of the Crown.

Henry's first parliament, composed mainly of Lancastrians, had, naturally enough, complied with his wishes for the direct settlement of the crown upon himself. Yet the king was still haunted by a fear that he had not done enough to make himself secure, so he applied to the Pope for a bull. This was unwise, as lending support to the idea that Rome had the right to interfere in the temporal concerns of England. Innocent VIII. at once issued a bull, in which Henry's titles to the crown were enumerated and sanctioned, and in which excommunication was denounced against all who should disturb the king in his possession, or his heirs in their succession.

Henry's marriage.

His marriage was another step by which Henry extended the basis of his regal rights. Parliament had

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expressed its wishes very clearly on this subject; and Henry must have been convinced that parliament was really moved in its profound anxiety by the reason which dominated himself, namely, the settlement of the crown beyond fear of disturbance. However, in January 1486 Henry married Elizabeth; but he had the unpleasant feeling that against his possession of the crown and his parliamentary title the House of York could assert its hereditary right. The nation was full of discontent, and its head lived as though on the edge of a precipice.

Insurrections.

Henry made a journey northward early in 1486 in order to pacify the resentful feelings against himself. The Yorkists, under Lord Lovel, broke out into open rebellion, but the rising was easily quelled. Then in 1487 there was a more formidable revolt. A youth named Lambert Simnel was put forward to personate the Earl of Warwick, son of that Duke of Clarence who had been confined in the Tower. Henry victoriously encountered the impostor at Stoke. Lincoln, Lovel, and others were slain, and Simnel was captured. He was not executed, but given menial employment in the royal kitchen. Henry next turned his attention to the great barons, whose power he further crippled. In 1488 Parliament, at the instance of the King, constituted a new commission of judges, chosen from the members of the Privy Council, with power to put down divers abuses and misdemeanours. The title of Star Chamber now began to be definitely applied to the new court created out of the Privy Council, though, strictly speaking, the court thus erected by the statute of 3 Henry VII. was not the actual Star Chamber. The Privy Council had long been accustomed to meet in the Star Chamber, and this was the origin of the body against whose jurisdiction many statutes had been enacted from the time of Edward III. The practice of maintenance, by which a lord could bind to himself a band of retainers, who wore his livery and espoused his quarrels, was rigidly suppressed.

Commission of judges

A new pretender, Perkin Warbeck, who claimed to

be the young Duke of York, brother of Edward V., now gave serious trouble. He was assisted by Margaret of Burgundy, and found powerful adherents in England. The pretender landed in Cornwall in September 1497. The royal troops advanced against him, and Warbeck was easily taken prisoner. He was subsequently executed, together with the Earl of Warwick, his most distinguished supporter. A third impostor, named Ralph Wilford, who, like Simnel, pretended to be the Earl of Warwick, was taken and hanged in 1499. Having secured his throne, Henry next reduced Ireland to subjection, and brought it into a closer union with England. Scotland was also closely united with the realm, and peace secured by the marriage, in 1502, of Henry's daughter Margaret to the Scottish king, James IV. The chief blot on Henry's character was the execution of the true Earl of Warwick.

Perkin Warbeck.

Henry summoned no parliaments in 1486, 1488, 1493, 1494, 1496, nor in the seven years extending from 1497 to 1504, or in the five years from the latter date until his death. He reigned altogether nearly twenty-four years, and summoned but nine parliaments throughout the whole period. He died on April 21st, 1509.

Henry's Parliaments.

The relation of the great towns of England to the Constitution underwent a change in the times of the Tudors. Henry VII. began the policy of strengthening the power of the municipal corporations at the expense of the inhabitants. A system of close election and irresponsible government was introduced, the mayor and councils being, in the first instance, nominated by the Crown, and subsequently self-elected by co-optation. It likewise frequently happened that the power of electing the borough members of parliament was made over to the corporation by charter, to the material injury of the power of the burgesses.

Municipal Corporations.

Henry VII. had some of the elements of greatness. He was brave in danger, though a lover of peace. He has been called the great re-founder of the English monarchy, and he certainly left it stable for his successor,

Henry the re-founder of the monarchy.

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after successfully grappling with numerous assaults upon it. He had the wisdom to see that the kingly power should rest upon the affections of the whole people. His wisdom and sagacity caused him to be designated a "second Solomon." He conquered his numerous enemies more by his great policy and wisdom than by shedding of blood or cruel war. Much has been written about Henry's avarice, but he was not greedy of gold for its own sake; "to him a large reserve was a great guarantee for peace and security."[1]

His laws.

Bacon passes a high eulogium upon Henry VII. when he describes him as "the best lawgiver to this nation since Edward I."; one whose laws "were deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the state of his people still more and more happy, after the manner of legislators in ancient and heroical times." He certainly enforced the salutary lesson of the majesty of the law. A royal speech, delivered before the parliament in January 1504, dwelt upon the inestimable value to every state of justice and law. The Chancellor, who was the King's mouthpiece, counselled the Commons that justice was the queen of the virtues; and he concluded with this peroration from St. Augustine: "Despise dungeons, despise bonds, despise exile, despise death; but let all men love justice." Yet Henry himself, a very enlightened monarch, connived at many illegal exactions in others, and allowed them to traverse these noble principles of justice. He suffered Empson and Dudley, his agents, to indict divers subjects accused of sundry crimes, with the view of extorting from them heavy fines; and their rapacity and oppression reflected odium upon himself. He also resorted to benevolences to raise money, and amassed an enormous sum in this way. When seized with illness, the King reviewed his past conduct, and resolved upon three things: first, a true

[1] Gairdner's *Henry the Seventh*, in the series of "Twelve English Statesmen."

reformation of all the officers and ministers of his laws, that justice from thenceforward might be truly and indifferently executed in all causes; secondly, that the promotions in the Church, which were at his disposal, should be thenceforward given to able men, who were virtuous and well learned; thirdly, that as to those who were in jeopardy from his laws, for things formerly done, he would grant a pardon generally to all.

Personal characteristics.

The welfare of England was dear to the heart of Henry, and for this he is worthy of honour. He not only established his own house upon the throne, but his policy secured for England peace, order, and prosperity. He likewise succeeded in raising the name of England abroad.

The Star Chamber.

Turning to the laws of Henry, the suppression of the practice of maintenance, which has already been briefly alluded to, was very important. This legislation was intended to deprive the powerful nobles of that armed force which was always at their command in their personal retainers. Then the king practically constituted the new legal tribunal, the Star Chamber, by which three of his cabinet ministers, calling to their aid a bishop and two justices, were authorised to punish all misdoers in a summary way, according to the existing statutes, but without being convicted in due form of law. This new engine of legal power, after exercising its powers beneficially for some time, began to assume the most extensive and arbitrary authority. As murders were of frequent occurrence, and the assassins were rarely arrested, parliament passed an act commanding coroners to execute diligently their duty of inspecting and inquiring into all violent deaths; and murderers were to be arraigned and brought to trial without delay. This statute is a ruling one upon the law of coroners. It is worthy of note also that the female sex were further guarded by parliament, and it was made felony to take them away against their will, procurers and receivers being subjected to the same penalty.

Another important law, passed in 1489, was the

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Statute of Fines.

Statute of Fines, which the King desired to utilise in curtailing the power of the nobles. It was a variation of an act of Richard III., and, instead of permitting owners to break the entail of their estates, it enacted that a fine, levied with proclamations in a public court of justice, should, after five years, except in particular circumstances, be a bar to all claims upon lands. Another law granted to the humbler classes the important privilege of suing *in formâ pauperis*, which threw open to the poorest the gates of legal redress against a rich oppressor. Henry also enacted the first game law, suppressed the extortions of sheriffs, and legislated for the public health and morals.

Game Law.

Trade and Navigation.

Henry's laws on trade and navigation bear witness to his foresight and sagacity. The King strongly encouraged all mercantile enterprise, and there were more enactments on trade during his reign than on any other subject. He steadily enforced the leading principle of our navigation laws—that of bringing foreign produce in British ships, which not only stimulated commerce, but powerfully contributed to the superiority of the navy. He also granted protection to the woollen, silk, and other trades. He further created a new coinage, and made the forging of foreign money, which was then current in the kingdom, treasonable.

Powers of Parliament.

Parliament was in possession of certain clearly-defined powers on the accession of Henry VII. There were also several checks upon the royal prerogative, while there had been further secured to every citizen certain important and inalienable rights. These constitutional points may be thus briefly indicated: first, the king could levy no sort of new tax upon his people, except by the grant of both Houses of Parliament; secondly, the previous assent and authority of parliament were necessary for every new law, whether of a general or temporary nature; thirdly, no man could be committed to prison but by a legal warrant specifying his offence, and when committed he must be speedily brought to trial by means of regular sessions of gaol-delivery; fourthly, the fact of guilt or

Privileges of citizens.

innocence on a criminal charge must be determined in a public court, by a jury of twelve men, from whose unanimous verdict no appeal could be made; fifthly, civil rights, so far as they depended on matters of fact, must also be decided by a jury; sixthly, the officers and servants of the Crown, violating the personal liberty or other right of the subject, might be sued in an action for damages, or, in certain cases, made liable to criminal process; and sixthly, the liability of the king's ministers to be impeached by the Commons for misgovernment was established.

Henry VIII.

Although these constitutional privileges were technically in vogue when Henry VIII. succeeded his father, the former monarch wielded so despotic a power that the influence of the Crown had never been greater than it was during his reign. The history of the Reformation period shows that such was the dependence of parliament upon the Crown and its advisers, that in less than thirty years four vital changes were decreed in the national faith. But if Henry's proceedings were arbitrary, they were, at least, arbitrary in the direction of national independence, and they delivered England from the degrading and alien tyranny of the Romish Church.

The Reformation.

While the German Reformation was primarily the outcome of an intellectual movement, that of England was, in the outset, a national political act. Herein lay Henry's strength in moving in accord with the popular feeling. At first Henry took part in the dogmatic controversy of the times, and broke a lance with Luther, receiving from the pope for so doing the title of "Defender of the Faith." He also zealously caused the persecution of heretics. Yet so jealous was this monarch of the royal prerogative, that in the passage of the coronation oath touching the constitution of the Church, he made this correction with his own hand: "Nott prejudiceall to hys jurisdyction and dignity royall." In the important part he took in European affairs, he always acted towards the Vatican in the manner of other Great Powers. "But his divorce proceedings brought him into

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complications out of which there was at last no other way of escape than by breaking with the external authority of the Bishop of Rome. In this state of affairs the king could not rely upon the doctrines of individual reformers, but only upon the great tide of national opinion, upon the insufficiently educated but influential parochial clergy, and upon the mass of the people. Their sympathies everywhere accorded with his political tendencies and his personal wishes, and afforded him a support similar to that which in former times the House of Commons had afforded to the Plantagenets against the barons. The boldness and acumen with which Henry VIII. carried out the scheme upon which he had resolved, gives his ruthless and violent personality a providential significance for England."[1]

The King breaks with Rome.

Henry's policy.

This accomplished, handsome, impetuous, self-willed, cruel, and yet in some respects magnificent sovereign began his reign vigorously. The cries of the people were loud against extortion, and to pacify them with a show of justice Henry caused Dudley and Empson, the notorious agents of his father, to be executed. Yet it was the system under which they acted that was at fault; these men had merely obeyed the wishes and laws of the departed king. Henry also endeavoured to secure glory in foreign fields, but he gained little profit or glory in his contests with France. In Scotland he was more successful, and in 1523 a peace for eighteen years was concluded with that country.

His Parliaments.

But it is with the course of constitutional history, as affected by Henry, that we are chiefly concerned. His first parliament, which met in January 1510, granted him two tenths and two fifteenths, and tunnage and poundage, but with a proviso "that these grants be not taken in example to the kings of England in time to come."[2] Four succeeding parliaments granted liberal

[1] Gneist's *History of the English Constitution.*

[2] The Journals of the House of Lords begin with 1 Henry VIII., and it appears from an original letter prefixed to them that Wolsey, in his high-handed way, tore out several leaves recording passages

subsidies for the prosecution of the war with France; and then Henry summoned no more parliaments for seven years—1515-23. It was during this time that Wolsey's power reached its culminating point. He exercised both civil and ecclesiastical authority in the most unconstitutional manner. In the parliamentary interregnum money was raised by forced loans and benevolences, and Wolsey's hand pressed heavily upon the people; but as the country was prosperous, the King was very popular, notwithstanding his unconstitutional rule.

Wolsey and the Commons.

In 1523 Wolsey took a high-handed step, which demonstrated both his own audacity and his master's contempt for parliament. He went down to the House of Commons and personally urged the grant of £800,000, a prodigious sum, to be raised by a property tax of 20 per cent. on lands and goods. The Cardinal addressed the members eloquently in favour of joining the Emperor Charles V. in a war against France, and urged the grant of the sum demanded as the estimated cost of the expedition. But he was strongly opposed by the independent members. Coming down a second time, he again harangued the Commons, who heard him through in silence, and made no response. When the minister demanded some reasonable answer, every member held his peace. At last the Speaker, Sir Thomas More, falling on his knees, with much reverence excused the silence of the House, and "endeavoured to show the Cardinal that his coming thither was neither expedient nor agreeable to the ancient liberties of that House." Ultimately, after fifteen days' debate, a much smaller subsidy than that demanded by Wolsey was granted, mainly through the influence of the servants and dependents of the Crown holding seats in the House.

which were disagreeable to him. But, for the most part, the entries at the commencement consist of a nominal roll of the peers present, with an occasional speech from the Lord Chancellor at the beginning of the session, nothing said or done by a peer in his individual capacity ever being set down.

Royal exactions.

In 1525 Wolsey appointed Commissioners with instructions to demand the sixth part of the goods of the laity, and the tenth part of the goods of the clergy, on the pretext that the king was about to lead an army into France. A forced loan had already been exacted three years before, on the King's promise of repayment out of the next subsidy granted by parliament. The new impost was everywhere resisted. London remonstrated, and the clergy stood upon their privilege only to grant money in Convocation, further asserting that the King could take no man's goods without the authority of parliament. Henry was compelled to annul the obnoxious commission, and, according to the old chronicler Hall, "the demaunde of money ceased in all the realme, for well it was perceived that the Commons would none paie." The King now resorted to a voluntary benevolence, and when it was pleaded that this was illegal under a statute of Richard III., the judges came to his Majesty's assistance by declaring that the statute, as the work of an usurper, was not binding on a lawful sovereign.

Parliament submissive.

Yet so obedient grew parliament to Henry's behests, that it twice released him from his obligation to discharge his debts by the repayment of forced loans. A statute was passed in 1529 by which the parliament, "for themselves and the whole body of the realm which they represent, freely, liberally, and absolutely give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money which to them is, ought, or might be due, by reason of any money, or any other thing, to his Grace at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters under the king's privy seal, general or particular, letter, missive, bond, promise, or obligation of repayment, or by any taxation or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose." Hall quaintly recites the effect of this humiliating surrender: "When this release of the loan was known to the Commons of the realm, Lord! so

they grudged and spake ill of the whole parliament; for almost every man counted on his debt, and reckoned surely of the payment of the same, and therefore some made their wills of the same, and some others did set it over to other for debt; and so many men had lost by it, which caused them sore to murmur, but there was no remedy." The King exacted another forced loan in 1544 from all persons rated at £50 per annum; and in the following year a general benevolence from all persons having land to the annual value of 40*s*., or chattels worth £15. Parliament again proved pliable, and passed an act granting to the King all sums borrowed from any of his subjects since 1542, with the additional proviso that any money which his Majesty should have already paid in discharge of these debts should be refunded by the creditor or his heirs. The spirit of the Commons of England was at a very low ebb when parliament consented to act as the indemnifier of Henry for his unconstitutional exactions.

Henry and the Pope.

After the fall of Wolsey, Henry drifted still further away from Rome. Cranmer exercised considerable influence over him, and parliament further aided the monarch in curbing the power of the clergy. Seeing the great advance in the King's sentiments, Sir Thomas More, who had been appointed Lord Chancellor, and who was a strong supporter of the papal authority, resigned the Great Seal. The King privately married Anne Boleyn, and applied to the pope for a divorce from Queen Catharine. This was refused, and Henry was threatened with excommunication. Although this was the incident which finally led the King to throw off the yoke of Rome, other considerations attaching to the royal supremacy had exercised a powerful influence over him. Parliament passed an act directed against all appeals to Rome, and the Houses of Convocation, with only four dissentient voices, declared that "the Bishop of Rome has by the law of God no more jurisdiction in England than any other foreign bishop; and the authority which he and his predecessors have here exercised was only by

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usurpation and by the sufferance of the English princes." Parliament further passed an act confirming the invalidity of Henry's marriage with Catharine, and the validity of that with Anne Boleyn ; and all persons were required to take the oath to support the succession thus fixed. Sir Thomas More and Bishop Fisher were the only eminent individuals who declined to do this, and they suffered for their contumacy.

Parliament legislates against Rome.

The legislature decreed to Henry the title of Supreme Head of the Church ; the authority heretofore claimed by Rome was transferred completely to the Crown ; and parliament accompanied the bestowal of the king's new ecclesiastical title with a grant of all the annates and tithes of benefices which had hitherto been paid to Rome. The king's personal history and that of the Reformation in England moved *pari passu.* The imperious Wolsey was succeeded by his whilom servant, Thomas Cromwell, in the councils of the sovereign. Cromwell doubtless suggested that the king "might save his honour and his independence by assigning his matrimonial question to the authorities within his own realm, by renouncing the supremacy of the Bishop of Rome, and by a re-assumption of the royal powers, almost to the extent in which they had existed down to Magna Charta ; in fulfilment also of the national wishes and aims of the Commons, as they had been plainly enough declared in the fourteenth and fifteenth centuries."[1] The sagacious Cromwell (afterwards Earl of Essex) became the author and pilot of an important body of parliamentary statutes, ordinances, and measures.

Thomas Cromwell.

The Reformation Parliament.

The work of the Reformation parliament of Henry VIII. forms a great epoch in our national and legislative history. Beginning its sittings in November 1529, it was not dissolved until April 1536, by which time it had effected a complete religious revolution. The Commons opened the theological campaign with an address, in which, on the one hand, complaint was made of the increase of heretical

[1] Hallam's *Constitutional History of England.*

teaching,—"frantic and seditious books contrary to the true Catholic faith,"—while, on the other hand, the scandalous weaknesses of the Church appeared as a long list of national grievances, with the strongly-prominent accusation that "such ecclesiastical laws and measures attack your Majesty's prerogative, and do your faithful subjects grievous wrong." The Commons pushed forward their reforming work, and the Lords, feeling that the country generally supported the Lower House, were obliged to agree to one measure after another. The first declaration of the royal supremacy agitated the clergy; and the Houses of Convocation, "with bated breath and whispering humbleness," ventured to make the reservation declaring Henry "sole and supreme head of the Church, as far as is allowed by the law of Christ." The national Church was now placed in direct opposition to Rome by the voting of the royal headship. The two Churches could not exist side by side: one or the other must triumph; and Henry soon manifested his adherence to the new principles. The laws were suffered to take their extreme course against the two most distinguished dissentients from his policy, Thomas More and Bishop Fisher, who were indicted for treason, and executed.

Suppression of the monasteries.

Henry's suppression of the monasteries has given rise to much controversy. But this root-and-branch measure, which, like all radical reforms, cut deeply, had become absolutely necessary. The monasteries were the seats of great disorders, inflicting innumerable evils upon the community; and they had become so corrupt that reformation could only touch that which ought to be destroyed. The Augean stable must be cleansed; and although a certain amount of evil was wrought in achieving so much good, and the King's disposition of the property was in too many instances most objectionable, there are few students of history who would now declare the suppression to be unjustifiable.

Full records of the debates in the Reformation Parliament have not come down to us; but, as one of the results of its action, the abbots disappeared from the House of

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Results of the Reformation Parliament.

Lords, and the parliamentary influence of the Church came to an end. In an eloquent summary of the labours of this first great parliament of the Reformation, a modern historian observes that "the Lords had ceased to be the leaders of the English people; they existed as an ornament rather than a power; and under the direction of the Council they followed as the stream drew them, when individually, if they had so dared, they would have chosen a far other course. The work was done by the Commons: by them the first move was made; by them and the King the campaign was carried through to victory. And this one body of men, dim as they now seem to us, who assembled on the wreck of the administration of Wolsey, had commenced and had concluded a revolution which had reversed the foundations of the State. They found England in dependency upon a foreign Power; they left it a free nation."[1]

Parliament of 1539.

The parliament of 1539 was the second in importance during Henry's reign. The general election which preceded it is more clearly defined in its details than any previous electoral contest. The condition of public affairs was grave, and Cromwell made the most strenuous exertions to obtain a majority for the Crown. A strange side-light is thrown upon the influence of the Court party over the suffrages of the electors by a letter of Cromwell to Henry. "For your Grace's parliament," wrote the minister, "I have appointed (for a Crown borough) your Grace's servant Mr. Morison to be one of them. No doubt he shall be able to answer or take up such as should crack on far with litterature of learning." Nevertheless, while there was Crown interference at some of the elections, the King deserves credit for his courageous act in throwing over the nobles, and taking his stand upon the full and clear decision of the people at large. The Houses were assembled to compose the religious differences in the realm, and to pass bills of attainder in connection with the recent conspiracy of the Marquis of

[1] *History of England*, by James Anthony Froude.

KING HENRY VIII.

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Exeter and Lord Montague. Parliament, viewing the confusion of the country with alarm, and fearful of interests which they valued even more than liberty, extended the powers of the Crown. Royal proclamations were invested with the authority of statutes. The King was empowered to complete the dissolution of the monasteries, and this act was speedily accomplished. Then came the legislation upon religious belief. Under the dominant influence of the infamous Gardiner, parliament passed the "Bloody Act of the Six Articles," which declared "That in the Eucharist is really present the natural body of Christ, under the forms and without the substance of bread and wine; that communion in both kinds is not necessary to the soul's health; that priests may not marry by the laws of God; that vows of chastity are to be observed; that private masses ought to be retained; and that the use of auricular confession is expedient and necessary." This was a temporary triumph for the papistical party, and the legislation even went too far for Henry personally. Cranmer struggled against it, but in vain, and heavy penalties were denounced on any who should act contrary to the above articles. The Lords and Commons, too ready to endorse Henry's wishes in all things, gave especial thanks to his Majesty for the godly pain, study, and travail with which he had laboured to establish the articles.

Pliable Parliaments.

In addition to the instances already given of the pliability of Henry's parliaments may be cited the condemnation of Cromwell, who for eight years had been supreme within the walls of the legislature, and supreme with the king and the nation—a man who influenced the polity of the Church of England in such fashion that after many storms his work still emerged from the waves, and remained triumphant. Parliament also attainted the Countess of Salisbury without any trial or confession; it humoured the king in his marriages and divorces; it condemned to the block the Duke of Norfolk, and his gallant son, the Earl of Surrey; and it altered the succession in obedience to the wishes of the sovereign, and

CHAP. I. Henry VII. and Henry VIII.

gave him power to dispose of the crown by will. The Parliamentary attainders of Anne Boleyn and Catharine Howard, being intended rather as judicial than legislative proceedings, were, as Hallam has justly observed, "violations of reason and justice in the application of law." But many general enactments of the reign bore the same character.[1]

The law of Treason.

Yet even this was not all. Parliament greatly extended the law of treason. The statute of Edward III. had marked out what were long regarded as reasonable limits with respect to this crime, but the legislation of Henry VIII. vexatiously increased them. At one time it was declared to be treason to dispute the validity of the king's marriage with Anne Boleyn, and at another it was treason to maintain it. It was declared to be treason to marry without the royal licence; treason for any save a spotless woman to marry the King himself; treason to speak against the sovereign, his rights, and his royal dignity; treason to call him a heretic or schismatic, to wish him harm, or to slander him, his wife, or his issue; and it was even treason to promulgate theories upon the validity of the marriages with Catharine and Anne Boleyn, or to refuse to be interrogated upon them. Bills of attainder were drawn up in an unconstitutional manner; and the judges were asked whether, if parliament should condemn a man to die for treason without hearing him in his defence, the attainder could ever be disputed. The judges replied that such a course would form a dangerous precedent, and that parliament ought to set an example to inferior courts by proceeding strictly according to justice; but as the court of parliament was supreme, an act of attainder could never, under any circumstances, be subsequently questioned in a court of law.

[1] Some of Henry's statutes against the individual were extremely severe, and others of wider scope were also very stringent. For example, there still remains in the Statute Book an Act of Parliament passed in his reign which provides that no person or persons who use the Welsh speech or language shall enjoy any office or fees unless he or they use and exercise the English language.

The House of Commons did, on one occasion during Henry's reign, take upon itself to avenge its own injuries. This was in 1543, when the remarkable case of George Ferrers occurred. According to Holinshed, the Commons sent their serjeant with his mace to demand the release of Ferrers, one of the king's servants and a member, who had been arrested for a sum of 200 marks, while on his way to the House. The gaolers and sheriffs of London not only refused compliance, but ill-treated the serjeant; whereupon the Commons ordered the sheriffs of London, and even the plaintiff who had sued the writ against Ferrers, to appear at the bar of the House. They were committed to prison, and the king, in the presence of the judges, confirmed in the strongest manner this assertion of privilege by the Commons. There was no former instance on record, either of a party being delivered from arrest at the mere demand of the serjeant, or of any one being committed to prison by the sole authority of the House of Commons. Subsequently, the Commons sometimes had recourse to a writ of privilege in order to release their members under arrest, but they rarely repeated the proceedings in Ferrers's case. It was done in 1575, however, in the case of one Smalley, a member's servant. But when it was discovered that Smalley, who had been arrested for debt, had fraudulently contrived his own arrest to get the debt cancelled, he was committed by the House and fined. Smalley's case is interesting as showing that privilege of parliament extended even to the servants of members. This invidious immunity continued until the time of George III., when it was abolished by statute. Under Mary and Elizabeth several persons were committed by the House to the Tower, or to the custody of their own serjeant, for assaults on members.

Important case of Privilege.

With respect to the representation in Henry's time, the counties and boroughs returning members numbered 148, and the number of representatives returned was 298. Henry granted or restored the representation to 32 other counties and boroughs, which returned 38 members.

The Representation.

Henry VIII. had grave faults, both as a man and as a

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Henry VII. and Henry VIII.
Henry's character and work.

sovereign, but he did a great constitutional work, even though he was frequently on the verge of breaking the Constitution itself, and casting it to the winds. Undoubtedly he strained the Constitution as far as any king had ever done; yet he prided himself upon keeping within its lines, and he sought to give all his actions the sanction of parliamentary authority. If he insisted upon a full recognition of the royal supremacy, he also exhibited great trust in the people, and it was this frank confidence which transformed them into willing and obedient subjects. He ruled with a strong hand, but the time was one in which a strong hand was pre-eminently needed, and it was to Henry's renown that he safely conducted the commonwealth through one of the gravest crises in its history.

Yet Parliament, in spite of its obsequiousness, advanced greatly as a representative institution. This is the distinction of Henry's reign as affecting the national assembly; indeed, it has been remarked that it was Henry VIII. "who raised the House of Commons from the narrow duty of voting supplies, and of passing without discussion the measures of the Privy Council, and converted it into the first power in the State under the Crown."[1] The Commons were so careless of their privileges at Henry's accession, that their attendance at the sittings of Parliament actually required to be enforced by a law. Subsequently, the popular representatives abandoned their quiescent attitude, and assisted the king in shattering the power of the House of Lords. Councils were no longer swayed by the great nobles; for the people, urged on by the necessities of the time and the spread of the principles of the Reformation, stood forward in the persons of their chosen representatives in the House of Commons, and became the true centre of national government.

[1] Froude's *History*.

CHAPTER II.

EDWARD VI. AND MARY.

Edward VI.

When the youthful Edward VI. ascended the throne upon the death of his father, January 28th, 1547, Parliament was the recognised moulder of the statutes affecting the Commonwealth. Though the Lower House had frequently shown itself too submissive to the sovereign, it could yet justify Henry's boast to the Pope that its discussions were free and unrestricted; and that the Crown had no power to limit its debates, or to control the votes of the members. It was the privilege of the Commons of England to determine everything for themselves, as the interests of the community might require.[1]

[1] The Journals of the House of Commons begin with the reign of Edward VI., but the first volume contains little more than a brief diurnal account of proceedings in reading bills, etc. The Journals of the Lords for some time are more explicit than those of the Commons. After Elizabeth's reign, however, the Commons' Journals were much fuller, so that Sir Simonds D'Ewes, who complained bitterly of the insufficient entries in Elizabeth's time, wrote: "In all parliaments and sessions of Parliament the Journals of the House of Commons do, for the most part, much excel those of the Upper House in the variety and abundance of observable matter, and in their copious and orderly relating of each day's passages." It is probable that the brevity of the entries in the votes of both Houses at particular periods was intentional, so as to prevent the knowledge of what was passing in Parliament from being bruited abroad. It is interesting to note that the very first entry in the Commons' Journals, under date November 8th, 1547, is of a Bill for the bringing-up of Poor Men's Children.

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The Protector Somerset.

Edward's tender years necessitated the appointment of a council, nearly all of whom were Reformers. In a very short time, however, the king's uncle, Edward Seymour, Earl of Hertford, afterwards Duke of Somerset, became Protector, and the practical ruler of England. He governed with a firm hand, but he was much beloved, being a man of high principle and integrity, and it is said that never did man so gain the hearts of the poor as did he. Admirable statutes were passed during the time of his government, but it is in the nature of such men to provoke opposition, and he fell before the rising star of the Earl of Warwick, afterwards Duke of Northumberland.

Edward's first Parliament.

There were only two parliaments during the reign of Edward VI. The first met at Westminster on November 4th, 1547. Its legislation revealed the more liberal spirit of the time in religious matters. The oppressive Six Articles Bill was repealed, as also were the acts of Henry IV. and Henry V. against the Lollards. All new treasons and felonies created during the previous reign were abolished, and the act of Edward III. was again adopted as the standard of high treason, save in so far that to affirm in words or writing that the king was not the head of the church, or that the pope was supreme ecclesiastically, still remained a treasonable offence. The clergy claimed that their proctors should have seats in the House of Commons, in order that they might have a voice in ecclesiastical legislation; but while the letter of the writs of summons to Edward's first parliament was on their side, the precedent set by themselves was against them. Their request was therefore refused.

Treason statute.

Before this parliament was dissolved, it displayed unusual independence, and a strong regard for justice and the popular interests. Especially with respect to the law of treason above mentioned, the Commons insisted upon the passing of a statute which has been characterised as "one of the most important constitutional provisions which the annals of the Tudor family afford." Persons accused of treason had hitherto been unable to rebut the

accusation on the ground that they were never confronted with their accusers, and it was now enacted that no person should in future be indicted or attainted for any manner of treason except on the testimony of two lawful witnesses, who should be brought face to face with the accused at the time of his trial, unless he should willingly confess the charges. This statute was disgracefully evaded in one or two subsequent reigns, but it became a great practical safeguard against oppressive persecutions. The statute which gave to the proclamations of Henry VIII. the force of law was repealed; but although the power became nominally extinct, it was actually used during Edward's reign.

A member imprisoned.

A notable case of imprisonment of a member, Dr. John Storie, occurred in 1548. Storie was committed to the custody of the serjeant-at-arms, "probably for some ebullition of virulence against the changes of religion."[1] When he had made due submission he was released; but again, in Mary's reign, he fell under the censure of the House for disrespect to the Speaker. The House thus clearly claimed the right to punish its own members, and to preserve order in debate. Storie was an implacable enemy of the Reformation, and delivered a violent speech in the House against the Supremacy Bill. He was executed for treason in Elizabeth's reign. As an illustration of the rigid adherence of the House of Commons to its privileges, a person who had served a subpœna out of the Star Chamber on a member, in the session of 1584, was not only put in confinement, but obliged to pay the party's expenses before the House would discharge him, and the offender made his humble submission on his knees.[2] While this assertion of privilege prevented irregular detentions and examinations by the Council, on the other hand it encouraged needy and worthless men by securing them immunity from arrest in civil and private suits.

[1] Hallam's *Constitutional History*.
[2] Hatsell's *Precedents*.

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Progress of the Reformation.

The Reformation made great progress under Edward, through the efforts of Ridley and Cranmer. The latter especially advanced the dogmatic aspects of the movement. He issued a revised Liturgy, known as the Second Prayer Book of Edward VI., together with Forty-two thoroughly Protestant Articles. The Common Prayer Book is an imperishable monument both of the national temperament and the religious feelings of the time. Parliament met on January 30th, 1552, and the Prayer Book passed without difficulty. A second but too coercive act was carried for uniformity of religious worship, persons who refused to go to church being liable to censure or excommunication, and those who attended any other service to imprisonment.

Popular measures.

Parliament also addressed itself to the social needs of the people. An act for the collection of alms for the poor in every parish was passed; and the tillage question being pressing, Commissioners were appointed to hold district courts, to empanel juries, and compel the owners to bring their recent pastures under the plough. A statute of usury was also passed supplementary to that of Henry VIII., which declared that the legal interest of money was limited to 10 per cent. The law of Edward "was not meant as if to allow usury, which was a thing unlawful, a vice most odious and detestable," but only "for the avoiding of more ill and inconvenience than before that time was used"; and since a sense of their duties in this matter "could by no godly teaching and persuasion sink into the hearts of divers greedy, uncharitable, and covetous persons," it was decreed that thenceforward no interest should be demanded or given upon any loan, under pain of forfeiture, imprisonment, and fine.

Action of the Commons.

The Commons had already signalised their power by rejecting the Government bill affecting treason, and passing one of their own, as we have just seen; and they further asserted their rights by throwing out Northumberland's bill for depriving Tunstal of the Bishopric of Durham, on a charge of treason. Northumberland was so displeased with the "wise and discreet

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persons" in the Lower House, that on April 15th, 1552, he dissolved Edward's first parliament, hoping for the return of a more tractable body.

Northumberland's Parliament.

In the course of a few months a new parliament became absolutely necessary for financial reasons. Accordingly, in January 1553, writs were sent out. But lest the counties, cities, and boroughs should return men of the wrong stamp—that is, those who were opposed to the Government policy—the letters to the sheriffs contained this passage: "Our pleasure is, that where our Privy Council, or any of them within their jurisdictions, in our behalf, shall recommend men of learning and wisdom, in such case their directions shall be regarded and followed, as tending to the same which we desire, that is, to have this assembly of the most chiefest men of our realm, for advice and good counsel." Northumberland's House of Commons was chosen, as a matter of fact, by a *congé d'élire*, a method expressly stated to have been introduced on this occasion. It is interesting further to note that the experiment of nomination was now tried as the general rule of an election for the first time. The Crown sent direct to the candidates in some instances, thus assuming the power to dispose of the seats; but in the majority of cases the sheriffs and mayors were the usual constitutional intermediaries.

Granting of estates.

Parliament met on March 1st, and Northumberland regarded its sittings with dread, for it might call for an investigation into the granting away of estates by the Crown during the minority. After making allowances for all legitimate transactions, estates worth half a million—equal to about five millions in our modern currency—had been appropriated by the ministers of the minority for themselves and their friends. Northumberland appeased one powerful section, the representatives of the London Corporation and City interests, by promising them protection against the Merchant Adventurers, and then he introduced his Subsidy Bill in the House of Commons. To relieve the country of debt, two fifteenths and tenths were demanded of the laity, to be paid in two

Subsidy Bill.

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years, with an income tax for the same period of five per cent. on the rents of their lands; and the clergy were required to give ten per cent. for three years on their benefices or other promotions. The Bill was debated at great length, but it ultimately passed. The Commons also passed an act to prevent frauds on the part of public officials, but they resolutely declined to pass Northumberland's bill for restoring the merchants' monopoly.

Dissolution of Parliament.

Thwarted on all hands, and especially by the Commons, the proud minister complained to Cecil of the slackness of those about him. Having obtained the subsidy after great difficulty, and seeing no hope of obtaining anything further, he dissolved this very inconvenient parliament within a month of its meeting. Meantime, the King fell seriously ill, developing alleged symptoms of poisoning. As the question of the Protestant succession now became all-important, Northumberland persuaded the dying Edward to alter the settlement of the crown as arranged in Henry VIII.'s will, and to make a will excluding Mary and Elizabeth from the succession in favour of Lady Jane Grey, the daughter of Henry's niece, Frances, Countess of Suffolk, and daughter-in-law of Northumberland. The will was subscribed by the Privy Council, but it could not be brought before Parliament, as the two Houses had been dissolved.

Mary succeeds Edward.

The death of Edward, which occurred on June 21st, 1553, arrested the noble work of the Reformation. The attempt to place Lady Jane Grey upon the throne proved abortive, and Mary, the daughter of Henry VIII. and Catharine of Aragon, became Queen. The reign of this bigoted sovereign is one of the darkest and bloodiest in our annals. Although the Council, the Peers, the

[1] Edward VI. granted or restored the privilege of sending representatives to Parliament to 22 boroughs, returning 44 members. Among these were Westminster, St. Albans, Maidstone, Liverpool, Lancaster, and Peterborough. Maidstone forfeited its privilege under Queen Mary for adhering to Wyatt's rebellion; but it was restored by Queen Elizabeth.

Commons, and the entire lay voices of England, liberal and conservative alike, were opposed to Rome, Mary had no sooner begun to rule than a fierce persecution was instituted against the Protestants. Preaching without a license was prohibited, and Hooper, Cranmer, Latimer, and other Reformers were arrested.

Her first Parliament.

Mary's first parliament, which had been elected on a wide basis, met at Westminster on October 5th, 1553. No fewer than 430 members were returned to the Lower House. On the day after Parliament assembled an important constitutional question arose in the Commons. One Dr. Nowel having been returned as member for Looe, when he was also a Prebendary of Westminster, it was debated whether he should sit in the House. A committee reported the precedents, and it was resolved, that, being represented in the Convocation, he could not be a member of that House; and he was expelled accordingly. The Commons resolved that the lay owners of Church lands should not be disturbed in their tenures under any pretext whatsoever, and also that the authority of the Pope should not be re-established. But the House was in favour of repealing the Act of Uniformity, and proceeded to declare the Queen legitimate. All the late treason acts were repealed, and the definition of treason was brought again within the limits of the statute of Edward III. Under pressure from Gardiner, the Bishop of Winchester, all acts in favour of the Reformation were repealed, the mass being restored, and the clergy required to return to celibacy. The Commons, however, were not intolerant, and while re-establishing the Catholic religion, they decided that nonconformists were not to be punished.

A clerical member expelled.

The Queen's marriage.

Parliament strongly resisted Mary's marriage with Philip of Spain, and on November 16th the Speaker of the House of Commons, Mr. John Pollard, waited upon the Queen with a message. He addressed her at considerable length, deprecating her union with a foreign prince, and urging her to marry one of her own subjects. The Queen was wroth, and replied to the effect that the

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English Parliament had not been wont to use such language to the sovereign, adding, "We have heard much from you of the incommodities which may attend our marriage; we have not heard from you of the commodities thereof—one of which is of some weight with us—the commodity, namely, of our private inclination. We have not forgotten our coronation oath. We shall marry as God shall direct our choice, to His honour and our country's good." Parliament was dissolved in December; and the ill-omened marriage with Philip went forward.

Parliament of 1554.

On April 2nd, 1554, a new parliament assembled, which passed the Royal Marriage Bill, and obviated the difficulties attending the accession of a female sovereign, by passing a declaratory statute to the effect that the kingly prerogative was the same, whether vested in male or female.[1] Gardiner endeavoured to introduce an act into Parliament to disinherit the Princess Elizabeth, but this was not allowed. He was unfortunately successful, however, with his reactionary ecclesiastical legislation, re-enacting the Lollard statute of Henry IV., and carrying a bill to restore the Episcopal Jurisdiction.

England again united with Rome.

The third parliament of this reign, which was to deal with the grave question of the re-union of England with the papal system, was summoned to meet on

[1] Originally, the word queen signified no more than woman, wife, though it soon came to be used for the wife of a king. The Wessex nobles, however, in consequence of the evil deeds of the wife of Beorhtric, resolved that no king's wife should in future be allowed to sit upon the throne beside her husband, or to be called queen. "Lady" was then the title usually employed; but from the time of Ethelred a special form for the coronation of the queen appears in the rituals. From the coronation of Matilda, wife of the Conqueror, onward, the title of queen was always applied to the wife of the king. But the name still bore the interpretation of king's wife only. Henry I. made an unsuccessful attempt to secure the succession for his daughter, but the rule of a woman was unprecedented, and was opposed both to the old English theory of election and the new feudal spirit. For a long period it was doubted whether a queen could reign in England, and the statute relating to Mary Tudor was passed to extinguish "the doubt and folly of malicious and ignorant persons."

November 12th, 1554. Letters were addressed by the Queen to all the sheriffs, urgently demanding supporters of her own views. The elections were favourable to the Court, and when the Houses met they drew up a supplication to the Pope, declaring their sorrow for past proceedings against him ; and all acts against the Pope were repealed, on condition that he would confirm their purchases of abbey and charity lands. In the House of Commons, out of 360 members present, there were only two dissentients. The name of one is not given, but the other, Sir Richard Bagenall, stood up to protest. "Twenty years," he courageously said, "that great and worthy prince, King Henry, laboured to expel the Pope from England." He for one had "sworn to King Henry's laws," and "he would keep his oath." A few days later the attainder of Cardinal Pole was reversed, and, at a sitting of the Houses at Whitehall, he attended before the King and Queen and the Parliament, and accepted the English surrender to Rome. The humiliating spectacle closed with the absolution, pronounced by Pole. Gardiner next completely revived the persecuting statutes, and restored the powers of the bishops' courts, as well as those of Convocation. Thus, by this one parliament the entire ecclesiastical legislation of Henry VIII. was swept away. A voluntary secession took place of several members of the House of Commons, who left the House when they saw the majority inclined to sacrifice everything to the ministry. For this the seceders, thirty-three in number—including the celebrated lawyer Plowden —were indicted by the Attorney-General in the Queen's Bench. They were condemned in heavy fines, which six of the members paid ; but judgment against the rest was interrupted by the death of the Queen. Coke strongly condemns these judicial proceedings, as contrary to the privileges of members of the House of Commons.

Persecution of the Reformers.

It was not long before the statutes against heresy were put into action. Hooper and other reformers were first burnt ; and under the authority of Pole and the Spanish Court the persecution waxed fiercer and fiercer, until

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at length Cranmer, Ridley, Latimer, and a large number of clergymen and others, were brought to the stake as heretics. This cruel zeal for Rome caused heavy gloom and distress to settle upon the nation, so that it had never been in such sad and dismal plight before.

Parliament refractory.

Not surprising, therefore, is it to find that Parliament began to grow refractory. When the Houses met in October 1555, the Commons refused a subsidy. Subsequently, however, they gave way, and voted two fifteenths in addition to a subsidy, but the Queen declined the former with thanks. In November a bill was brought in for the surrender of first fruits to the Pope. It was hotly contested in the Lower House, and only passed by 193 votes to 126.

Privilege.

An example of the manner in which the privilege of Parliament was set aside may here be cited. A member of the Commons, Mr. Gabriel Pledall, having been bound in recognisance in the Star Chamber to appear before the Council within twelve days after the end of Parliament, the Commons declared to the Lords that their privilege was broken. On a conference, the Chief Justices, Master of the Rolls, and Serjeants affirmed that the recognisance was no breach of privilege. But as Parliament became more and more intractable to the Queen's wishes, she dissolved it on December 9th, and sent several of the independent members to the Tower.

Mary's last Parliament.

When Mary's last parliament assembled, on January 20th, 1558, the Queen had little spirit to enter into a contest with it, being overwhelmed by the loss of Calais.

Liberty of the press.

The first attempt to restrain the liberty of the press was made in this parliament. A bill was brought into the Lords declaring that "No man shall print any book or ballad, etc., unless he be authorised thereunto by the King and Queen's Majesties' license, under the Great Seal of England." Although the printing press had been nothing like a century in operation as yet, its power began to be feared. In consequence of the sudden dissolution of Parliament, the bill above referred to did not get down to the Commons.

National Defence.

The two Houses of Parliament, forgetting all grievances in their patriotism, undertook to provide for the national safety, and a committee appointed by Parliament recommended the largest subsidy ever granted to an English sovereign, and one equivalent in modern computation to an income tax of 20 per cent. for two years. The Commons, however, cut down the proposed grant by one-half, agreeing to give four shillings in the pound for one year, and to pay it all at Midsummer. They promised to give more, if necessary, another year. The clergy in convocation taxed themselves with a subsidy of eight shillings in the pound, to be paid in four years, and this was confirmed by Parliament. The country was called upon to arm, and the Commons resolved to defend the country to the uttermost.[1]

Death of Mary.

But while this was going forward, the fires of persecution still raged at Smithfield. How long England would have continued to suffer under the religious vendetta is fortunately now only matter of speculation, for on November 17th, 1558, Mary died, and one of the worst reigns in British history came prematurely to a close. There died also Cardinal Pole, the moving spirit of the Marian persecution, who passed away only a few hours later than the Queen. The horrors of the Spanish Inquisition had been transferred for a time to English soil, but they had not the effect anticipated by the so-called "purifiers," Gardiner and Pole. So far from uprooting and supplanting the work of the Reformation, they drove many who, at Mary's accession, were favourable to the Romish Church into the ranks of Protestantism. The effort to suppress freedom of opinion, whether in the religious or the political sphere, must inevitably tend, with an enlightened people, to encourage its growth.

[1] It may be stated here, at the close of the parliamentary proceedings of Mary's reign, that the privilege of sending representatives to Parliament was granted or restored by Mary to 14 boroughs, which returned 25 members.

CHAPTER III.

THE REIGN OF ELIZABETH.

A glorious age.

The nation profoundly rejoiced over the accession of Elizabeth, for England had sore need of rest, and longed for peace and security at home and abroad. An address to the Council upon her Majesty's ascension stated that the realm was exhausted; that the nobility were poor and decayed; that justice was not executed; that food was dear, with consequent suffering amongst the poorer classes; and that France was threatening England from the south, and Scotland from the north. Yet with all these causes for retrogression, during the long and illustrious reign of Elizabeth the renown of England rose to a greater height than at any previous period in the nation's history. Great statesmen, of whom Cecil, Bacon, and Walsingham were the chief, guided the affairs of England, generally with wisdom and discretion; men of adventure, like Drake, Raleigh, and Frobisher, made Britain celebrated as well as feared in remote parts of the earth; while Shakespeare, Spenser, and other brilliant luminaries shed a glory upon her literature which will never fade away.

The Constitution under Elizabeth.

Constitutionally, however, the nation did not advance to the same degree. It is true that with the reign of Elizabeth there commenced a new era in the life of Parliament; but legislative progress was crippled, owing

QUEEN ELIZABETH OF ENGLAND. 1

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to the stern use which the Queen made of the royal prerogatives.[1] In this she followed the example of her father. In the course of the hundred years immediately preceding her accession, English society had changed. The feudal barons had become practically extinct, and they had been succeeded by a race of country gentlemen, who held their own course far away from the influences of the Court. Independence and a determination to uphold the rights and privileges of Parliament were the characteristics of the knights of the shire and the members for cities and boroughs now sent up to Westminster. Yeomen and farmers of substance had established themselves upon the soil; the towns and seaports had become great centres of wealth and commerce; while last, but not least, the Puritans had slowly been acquiring strength; and with their hatred of priestcraft was mingled that sturdy adherence to political and civil rights, which in a later reign measured itself against the Crown, and came off victorious.

Her parliaments.

Elizabeth summoned ten parliaments only in forty-five years, and she liked as little as her predecessors the bold and resolute attitude of the Commons. In every one of her parliaments this courageous spirit manifested itself, though not in sufficient force to completely impress itself upon the legislation of the period. But Elizabeth's "faithful commons" did not refrain from discussing the succession to the crown, the Queen's marriage, and the reformation of ecclesiastical abuses. They also upheld their own privileges, condemned the grant of monopolies, and insisted upon their right to advise the Crown upon all affairs of state. They, in fact, laid anew, and upon a broader basis, the foundation of parliamentary privilege and authority.[2]

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[1] See Lord Farnborough's article, "Parliament," in the *Encyclopædia Britannica.*

[2] Sir Simonds D'Ewes's "Journal of all the Parliaments of Queen Elizabeth" presents us with a clear and interesting picture of the doings of both Houses. While drawing upon the inadequate official records, the author states that he had also access to MSS. in

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Parliament of 1559.

The first of Elizabeth's parliaments met for business on January 25th, 1559. The Queen attended in person, and amongst the peers on the first day sat Dr. Feckenham, Abbot of Westminster. This, however, was the last appearance of any abbot or prior in parliament. The Keeper of the Great Seal was Sir Nicholas Bacon, father of a still greater man. The Commons immediately set to work with thoroughness and vigour to establish the Protestant religion. The constitution and liturgy of the National Church were restored upon nearly the same lines as those which marked the close of Edward VI.'s reign. The Acts of Supremacy and Uniformity were carried, the statute of Philip and Mary affecting religion was abrogated, and the papal authority repudiated. The First Fruits Bill was quickly carried through both Houses, as well as a Tunnage and Poundage Act. The latter provided a duty on exports and imports, which was supposed to be given for the police duty of the seas. The Commons further granted more than all which they had refused to Mary—two fifteenths and tenths, half a crown in the pound on all personal property, and four shillings in the pound on the rents of land. The religious houses founded by Mary were suppressed, and their property given to the Crown.

The Queen's marriage.

The Speaker of the House of Commons, Sir T. Gargrave, with the Privy Council and thirty members of parliament, demanded an audience of the Queen on February 6th. Having obtained it, they requested her, in the name of the nation, "to be pleased to take to herself a husband." Elizabeth naturally required time

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the possession of Sir R. Cotton (now in the British Museum), to a manuscript journal kept by Lord Burghley, to notes of speeches "penned by those who spake them," and to other collections. He had likewise no doubt the assistance of the "Historical Collection; or, an exact account of the Proceedings of the last Parliaments of Queen Elizabeth: by Heywood Townsend," a member in those parliaments. This work was afterwards printed in folio. The Historical Manuscript Commissioners state that there is a manuscript "Journal of the Lower House in the 35th Elizabeth," which corroborates the general accuracy of Sir Simonds's records.

to consider so serious a matter, and after a lapse of four days she summoned the deputation to receive her answer. She announced that her present intention was to remain unmarried. "She intended to spend her own life for the good of her people; and if she married she would choose a husband who would be as careful for them as herself. If, on the contrary, she continued in her present mind, she could not doubt that, with the help of Parliament, the succession might be secured, and some fit governor might be provided, peradventure more beneficial to the realm than such offspring as might come of her. Children were uncertain blessings, and might grow up ungracious. For herself it would be enough that a marble stone should declare that a queen, having reigned such a time, lived and died a virgin." Upon this the Commons gave up for a time the part of matrimonial matchmakers. Philip of Spain continued his suit, however, but Elizabeth finally rejected him.

The Parliament of 1563.

The second parliament of the reign opened on January 12th, 1562. Elizabeth had managed to do without the advice of the Commons for three years, although the important question of her marriage was agitating Europe, and trouble was gathering in consequence of the action of Mary, Queen of Scots. The question of the succession likewise again assumed a momentous aspect, for Elizabeth had been ill almost unto death, and Mary Stuart was already spoken of by her Holyrood household as Queen of England. Parliament tried a variety of means to induce Elizabeth to nominate her successor, but in vain. A penal bill against the Catholics was carried after some difficulty, but an attempt to enforce it upon the person of the detested Bonner failed through a technicality. Heavy penalties were imposed on Catholic priests for refusing the oath of supremacy. While severe legislation against any form of religion can never be defended, Elizabeth never intended that her penal legislation should be enforced in its full severity, and it was only initiated for the security of the throne and the Protestant religion. Some reaction was to be expected

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after so violent a reign as Mary's. But Elizabeth's religious legislation pressed not alone against the Catholics, but against the discontented Conformists, Independents, and others. In the House of Lords, Lord Montagu delivered an able and courageous speech on the Supremacy Bill, demanding toleration for the Catholics, seeing that they disturbed not nor hindered the public affairs of the realm, neither spiritual nor temporal. "I do entreat," he said, "whether it be just to make this penal statute to force the subjects of this realm to receive and believe the religion of Protestants on pain of death." In the Commons, Mr. Atkinson, a student of the Inner Temple, made a similar speech. Although these addresses did not prevent the passing of the statute, they exercised a salutary influence upon the Government.

Miscellaneous Legislation.

Several important domestic acts were carried during the first session of the next parliament (1563), including a tillage act reviving the statutes of Henry VII. and Henry VIII. for the rebuilding of farmhouses, and breaking up of the large pastures; an act for the revision of wages; and an act requiring masters to hire their servants by the year. The maintenance of the navy was also provided for by legislation. Among other acts passed was one declaring the authority of the Lord Keeper of the Great Seal and that of the Lord Chancellor to be one. Henry VIII. had, by act of parliament, consigned the first place of honour among laymen in parliaments and great councils to the Lord Chancellor, the second to the Lord Treasurer, the third to the Lord President of his Majesty's Council, and the fourth to the Lord Privy Seal, "if of the degree of barons of Parliament, or above"; and they were to take precedence of all dukes, except those of the blood royal.

The Bishops.

Parliament assembled again in October, but by reason of the plague then raging in the cities of London and Westminster, it was prorogued on six successive occasions, and did not actually meet for the election of a Speaker and the despatch of business until September 30th, 1566. The Commons passed a measure called the Bishops' Bill,

which legalised the status of the prelates, declaring that as they "had been nominated according to the provisions of the act of Henry VIII., and had been consecrated according to the form provided in the Prayer Book, they should be held to have been duly and lawfully appointed, any statute, law, or canon to the contrary notwithstanding." Under this act, as originally drawn, the bishops could have begun a persecution against the Catholic recusants, but the peers proved more liberal in religious matters than the Commons at this juncture, and deprived the measure of its principal retrospective clauses, in order to avert an imitation by the Protestants of the spiritual fury of Rome.

The Royal marriage.

Both Houses resolved to put an end to Elizabeth's dilatoriness on the marriage question; and seeing their attitude, as well as the discontent spreading over the country, the Queen promised to marry. She was very wroth, however, when an address was presented to her from Parliament, expressing a fervent wish that she would marry, "where it should please her, with whom it should please her, and as soon as it should please her." In reply she said, "She was not surprised at the Commons; they had small experience, and had acted like boys; but that the lords should have gone along with them, she confessed, had filled her with wonder."

The Queen and the Commons.

Elizabeth commanded the House of Commons to be satisfied with her promise of marriage; but the members insisted on pursuing the subject. Her injunction to silence they treated as a question of privilege, and Mr. Paul Wentworth, one of the boldest spirits of the Commons, rose to know whether such an order "was not against the liberties of Parliament." There was a debate of five hours, and the matter was adjourned, but in the interval the Queen sent for the Speaker, and told him that there must be no further argument. The Commons drew up an answer asserting their liberties and privileges, and the Queen gave way, and withdrew her command. The revocation was taken by the House "most joyfully, with most hearty thanks and prayers for the same."

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Parliament was dissolved on January 2nd, 1567. Elizabeth was present at the dissolution, and after Sir Nicholas Bacon had spoken in her name, she was so nettled by the attitude of the Commons on the succession question that she stood forward and said (*inter alia*): "I have in this assembly found such dissimulation where I always professed plainness, that I marvel thereat; yea two faces under one hood, and the body rotten—being covered with the two vizors, succession and liberty—which they determined must be either presently granted, denied, or deferred; in granting whereof they had their desire, and denying or deferring thereof—those things being so plaudable, as indeed to all men they are—they thought to work me that mischief which never foreign enemy could bring to pass—which is the hatred of the Commons." She then divided her enemies into four classes,—the broachers and workers of evil, the speakers of eloquent tales, the agreers who were light of credit, and those who sat still and mute and meddled not. "Henceforth," she concluded, "whether I live to see the like assembly or no, or whoever it be, yet beware how you prove your prince's patience as you have now done mine." The Houses, having been thus scolded, were sent about their business, "but with comfortable words."

Parliament of 1571.

Upwards of four years elapsed before Elizabeth summoned another parliament; and then it was only the direst necessity that drove her to it. The question of the succession and the royal marriage were important matters still undetermined; but now other reasons compelled her to call the Houses together. Her treasury was empty, and the customs had been ruined by the suspension of commerce. Ireland took nearly a fourth of the revenue; Scotland was a burden; and the navy and the secret service subsidies absorbed a good deal of the remainder. So on April 2nd, 1571, Elizabeth again appeared in person to open a parliament. On the 4th the Commons presented their Speaker, Mr. Christopher Wray, who took the opportunity of inflicting a speech of two hours' duration upon his audience. It was agreed

at the opening of the session that the Litany should be read every day, as in the last parliament, and a prayer also said by Mr. Speaker, "as he shall think fittest for this time, to be begun every day at half after eight a.m., and at that hour each then making default shall forfeit for every time fourpence to the Poorman's Box."

The Speaker says prayers.

Parliament immediately devoted itself to stringent religious legislation. Even Cecil (now Lord Burghley) felt this to be necessary, in consequence of the action of the Romanists. Elizabeth's title to the throne was a purely parliamentary one; and, while this was the best of all titles, being based on the people's will, the Catholics did not scruple to put forward the alleged superior hereditary claims of Mary, Queen of Scots. By Henry VIII.'s will the succession after Elizabeth was vested in the House of Suffolk, but this title had been practically vitiated by the unjust condemnation of Lady Catharine Grey's private marriage with the Earl of Hertford. Mary, driven from her Scottish throne, took refuge in England, where she became a constant source of anxiety. The Duke of Norfolk, the first of English nobles, and the Earls of Northumberland and Westmoreland, entered into a conspiracy, with the object of deposing the Queen and re-establishing the old religion with the aid of the Duke of Alva; and in 1570 Pius V. issued his famous bull, excommunicating and deposing Elizabeth, and absolving her subjects from their allegiance. This bull was far more injurious in its consequences to those it was designed to serve than to Elizabeth.[1]

Papist conspiracies.

The Houses dealt decisively with the Pope's bull. The Commons showed that they could legislate as well as talk, and two important bills were speedily passed. The first made it high treason to affirm that the Queen was a heretic, schismatic, tyrant, infidel, or usurper of the crown; to call in question her title; or to designate any particular person as her heir or

Legislation against Rome.

[1] Hallam's *Constitutional History of England*.

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successor, except the natural issue of her body. The second measure dealt with the Pope's interference, and enacted, first, that any person publishing any bull from Rome, or absolving and reconciling any one to the Romish Church, or being so reconciled, should incur the penalties of high treason; secondly, aiders and comforters after the fact incurred the penalties of præmunire, while any person guilty of concealing the offer of absolution was condemned in misprision of treason; and thirdly, præmunire was imposed on those who brought into the realm relics or articles "hallowed and consecrated, as it is termed, by the Bishop of Rome."

Communion and the Thirty-nine Articles

A bill was also brought forward to compel all persons, of whatsoever degree, not only to attend service on Sundays at church, but to be present twice a year at the Communion. A fierce debate raged round these proposals, and Mr. Aglionby, the member for Warwick, became conspicuous in raising his voice for liberty of conscience. He regarded the Communion as "something more than an ordinary outward observance, and thought that the law ought not to meddle with it." But the bill passed, notwithstanding the determined resistance offered to it when it reached the Upper House. Elizabeth, however, in the exercise of a wise discretion, ultimately permitted it to drop. Parliament now proceeded to impose the Thirty-nine Articles of Religion. The articles, as originally drawn up in 1551 and revised in Convocation, were forty-two in number; but in 1563 they were reduced to thirty-nine, and in that year an abortive attempt was made to enforce them upon the clergy. Now they were made binding by Act of Parliament; and for centuries these articles were destined to fetter the consciences of unwilling subscribers. A great number of other acts were passed this session, including one for checking the profligate administration of Church property by ecclesiastical corporations.

Debate on the validity of Burgesses.

But some of the most important and interesting debates in our parliamentary history, as affecting the constitution of Parliament itself and the title to membership, took place in this session of 1571. They seem to have escaped the

attention of many historians. On April 19th "a Bill for the Validity of Burgesses not resciant" (resident) was read a second time, and committed after much debate. Mr. Warncombe, of Hereford, recommended all burgesses to see to that bill. "It may touch and overreach their whole liberties. Lords' Letters may henceforth bear all the sway." Mr. Norton explained the meaning of the bill, which was to shame the imperfection of choice, too often seen, *by sending unfit men.* It especially struck at strangers, for, "by the political law, no man ought to be chosen for any borough, *but only residents and inhabitants*: the choice should be of such as were able, and fit for so great a place of employment, without respect of privilege of place or degree." Another member contended that representatives in Parliament should be "the very inhabitants of the countries" they were sent from, that being doubtless "the true meaning of ancient kings and our forefathers, who began and established this Court. The old precedent of parliament writs teaches us, that of every country their own burgesses should be elected, etc." Mr. Bell wished there might be a penalty of forty pounds upon every borough that should make election at the nomination of any nobleman. Mr. Alford said: "Above all things, care ought to be taken for the choosing of fit men. None should be of the House not of thirty years of age at least. And for the choice of townsmen, there should be one of their own elected, or some gentleman near them, who had knowledge of the state of the country; and the second member should be a man learned and able to utter his mind and opinion" These speeches are the first reported which discuss in detail the constitution and forms of parliament; and there were others delivered during the same session of 1571, on cognate subjects, which demand attention.

The Queen and the Commons.

A question having arisen involving the liberties of the House of Commons, and false reports being spread, on April 20th Mr. Speaker declared the Queen's Majesty to have as good liking of the House, as ever of any parliament since her Majesty's reign. Nevertheless, a

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member named Strickland, who had introduced a measure without permission for the alteration of the Prayer Book, was sent for, reprimanded, and forbidden to return to the House. It was this incident which gave rise to an animated debate on the date just mentioned, and several members used language of such boldness and independence as had not hitherto been heard within the walls of the House of Commons; but it was repeated, and, indeed, acquired additional strength, in several succeeding sessions. Mr. Wentworth requested "care for the credit of the House, and for the maintenance of free speech, the only means of ordinary proceedings, and to preserve the liberties of the House, and to reprove lyers." Mr. Treasurer replied that it was convenient that ill speeches should be avoided. But he had no sooner sat down than Mr. Carleton rose, who signified that a member of the House (Mr. Strickland) was detained from them, by whose commandment and for what cause he knew not. Mr. Carleton continued that "as Mr. Strickland was not now a private man, but was specially chosen to supply the room, person, and place of a multitude, whatever the intendment of his offence might be, he should be sent for to the bar of that House, there to be heard, and there to answer."

A member excluded

Mr. Treasurer replied that the member "was in no sort stayed for any word or speech in that place offered, but for the exhibiting of a bill into the House against the prerogative of the Queen, which was not to be tolerated." Sir Nicholas Arnold, "with vehemence," moved that care be taken of the liberty of the House. Mr. Yelverton declared that "the precedent was perilous, and though in this happy time of lenity nothing of extremity was to be feared, the times might be altered, and what now is permitted, hereafter might be construed as a duty, and enforced even on the ground of the present permission. To say the Parliament had no right to determine of the Crown was high treason. Men are not there for themselves, but for their countries. It was fit for princes to have their prerogatives, but straitened

within reasonable limits. The prince of herself could not make, neither, by the same reason, break them."

Precedents.

Mr. Fleetwood offered precedents for "men called to account for their speeches. Under Henry IV. a bishop was committed to prison by command of the King. The Parliament became suitors for him. In the time of Henry V. the Speaker himself was committed, and another of the House. The House had no remedy but to be suitors to the King. He moves that the House be humble suitors to her Majesty, and neither send for him, nor demand him of right." The Speaker moved "that the House should make stay of any further consultation thereupon."

The Queen yields.

But the general temper of the Commons was so unyielding, and the cry of privilege was so universal, that the Queen removed her prohibition from Mr. Strickland, and on the day following he reappeared in the House.

Sittings of the Commons.

A singular instance of the abandonment of bills is found under date April 21st, when a report was brought from the Lords, "that as the season of the year waxed very hot and dangerous for sickness, so they desire the Lower House to spend the time in proceeding with necessary bills for the Commonwealth, and lay aside all private bills." The afternoon sittings of recent sessions in the reign of Victoria had their forerunners in May 1571, when the House met at three o'clock p.m. on Mondays, Wednesdays, and Fridays, and sat till five o'clock.

A case of bribery.

There is still nothing new under the sun, for on May 10th, in Elizabeth's parliament of 1571, the House of Commons sat to investigate a case of bribery. Thomas Long, "a very simple man and unfit to serve," was questioned how he came to be elected. He confessed that he gave the Mayor of Westbury and another £4 for his place in parliament. They were ordered to repay this sum, to appear to answer such things as should be objected against them in that House, and a fine of £20 was to be assessed on the corporation and inhabitants of Westbury, for their "scandalous attempt." Not long after this occurrence, it was reported to the House that some of

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the members had received fees or rewards for their voices for or against bills; but a committee of investigation reported that "they could not learn of any member that had sold his voice in the House, or any way dealt unlawfully, or indirectly in that behalf."

Nominations.

With respect to the question of nominations, it is important to note that the infringement of the liberties of the House of Commons was held to consist in the political interposition of the government, directly or indirectly; and that the recommendation or assignment of particular individuals by the lords who owned the borough, or even of the Queen's Steward connected with the place, was not only not held in such light, but even desired, on the ground of the interests such parties possessed in the neighbourhood, and their better knowledge of those who were fittest to promote its local interests. Sir Simonds D'Ewes observes in his *Journal* that it was very common in former times, if any borough fell into poverty or decay, to avoid the charge of their burgesses' allowance. They either got a license from the Crown to be discharged from such election and attendance, or by degrees discontinued it themselves. But at a later period, when the knights, citizens, and burgesses of the House of Commons for the most part bore their own charges, many of the boroughs which had discontinued their former privilege of sending members now resumed it. This was notably the case in Elizabeth's time, and during the succeeding reign. Hence, many small boroughs, remarkable for little beyond their venality, long continued to enjoy a representation equal to the counties and cities, and superior to many of the great towns of England.

The Parliament of 1572 and Mary Stuart.

Elizabeth's fourth parliament met for its first session on May 8th, 1572. The chief matter before it was the impeachment of Mary Stuart. The Scottish Queen's conspiracies against Elizabeth and in favour of Rome and Spain, and the revelations respecting Darnley's murder, had greatly shocked the community. Burghley was most anxious to push forward the bill of attainder

against Mary, but Elizabeth long opposed the step. The Lord Treasurer was persistent, however; and the Commons also becoming resolute, on May 19th it was resolved to proceed against Mary in "the highest degree of treason," etc. A deputation from both Houses waited upon the Queen, who requested the Houses to defer their proceedings for a time, and pass, for the present, a less extreme measure. But the case of the Duke of Norfolk was on a different footing, and Elizabeth was reluctantly compelled to sanction his execution for treason. A bill was then carried to render the Scottish Queen unable to succeed to the crown, but Elizabeth delayed her assent to it.

The Duke of Norfolk executed.

Prorogation after prorogation now took place, and it was not until February 8th, 1576, that Parliament again met for the despatch of business. On the second day of its assembling a precedent was formally set which has held good unto this day. Lord Russell, son and heir to the Earl of Bedford, and burgess for Bridport, was ordered to continue a member of the House of Commons, notwithstanding the newly-acquired earldom of his father. In consequence of this rule, the eldest sons of peers—as, for example, the Earl of Derby when Lord Stanley, and Lord Harfington, eldest son of the Duke of Devonshire—have been able to hold seats in the Lower House.

Eldest sons of peers.

The session of 1576 would have passed over without comment but for the question of privilege, which was again warmly raised. Mr. Wentworth, member for Tregony, spoke with singular freedom on behalf of the liberties of the Commons. "In this House," he observed, "which is termed a place of free speech, there is nothing so necessary for the preservation of Prince and State as free speech; and without this it is a scorn and a mockery to call it a Parliament House, for in truth it is none but a very school of flattery and dissimulation. Two things, Mr. Speaker, do great hurt in this place: the one is a rumour that the Queen's Majesty liketh not such a matter —whosoever preferreth it, she will be offended with him; or the contrary. The other is a message sometimes brought into the House, desiring that this or that complaint should

Parliamentary Privilege.

not be mentioned. He wished such rumours and messages were buried with the father of them in hell." This speech was too bold a one to be passed over, and Wentworth was brought before the Privy Council, by whom he was committed a close prisoner to the Tower. After being there for a month he was pardoned, and reappeared in the House, "to the great contentment of all present."

The Session of 1581.

Twenty-five several prorogations of Parliament now took place, and the House of Commons did not again assemble until January 16th, 1581. The Speaker, Sir Robert Bell, Lord Chief Baron of the Exchequer, being dead, the Commons elected Mr. Popham, the Solicitor-General, in his place. The Wentworths again caused commotion in high quarters by their independent action. Mr. Paul Wentworth, a brother of the member for Tregony, moved that there should be a fast of the House, and that every morning, before business commenced, there should be a sermon, "that so beginning with the service and worship of God, He might the better bless them." The House, overruling the Queen's orders to the contrary, decreed, by 115 votes to 100, a fast to be holden in the Temple Church; and requested the Privy Council to select the daily preachers for Parliament. The Queen, exceedingly wroth, sent for the Speaker, and told him that the House must withdraw its resolutions. Matters were smoothed over by one Mr. Nicholas St. Leger, who counselled the House to submit, but with the hope "that both her Majesty and others would repent all defaults, and humble themselves to God in sackcloth and ashes." This motion was adopted by the House, and accepted by the Queen. An act was passed making it treason on the part of Papists to absolve subjects from their allegiance, to attempt to seduce them to the Romish religion, or to commit other acts against the authority of the sovereign. Another act made it felony to publish rhyme, book, ballad, letter, or writing to the defamation of her Majesty.

In this session of 1581 we find recorded the first conflict of opinion between the two Houses of Parliament.

The Commons sent up a new bill for fortifying the borders towards Scotland, and returned a former bill, which the Lords, with great deliberation, had passed and sent down with the same title. This course the Lords thought "derogatory to the superiority of the place, and contrary to the ancient course of both Houses. As they dislike this disorder, so it is their pleasure that this their misliking be entered in the Records of Parliament, lest so evil an example may hereafter be used as a precedent." Their lordships, however, as in many subsequent instances, accepted the bill of the Commons. During this session certain causes of appeal between party and party were tried at the bar of the House of Lords, and entered in their Journal. The Upper House was now first recognised as a Court of Appeal. The Commons made certain important orders affecting themselves, inflicting a fine of £20 upon every knight of the shire who had been absent the whole session without leave, and one of £10 upon every citizen, burgess, or baron for the like default; ordering also that all knights, citizens, burgesses, or barons for ports as had attended and departed without license should forfeit and lose his or their wages, and that henceforth none should depart without license, upon pain of fine, besides loss of wages. The fourth parliament of Elizabeth lasted altogether eleven years, from May 8th, 1572, to its dissolution on April 19th, 1583.

Conflict between the two Houses

The Lords a Court of Appeal.

Orders touching the Commons.

The most remarkable assertion of the right of the House of Commons to inflict punishment upon its own members occurred in 1581, the offender being one Arthur Hall, burgess for Grantham. Hall, who had previously been arraigned at the bar "for sundry lewd speeches," was now expelled from the House, fined, and imprisoned in the Tower, for having published a book, "not only reproaching some particular good members of the House, but also very much slanderous and derogatory to its general authority, power, and state, and prejudicial to the validity of its proceedings in making and establishing of laws." Hall made his submission, but was not liberated till the dissolution of Parliament. Some years

Expulsion of a member.

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before this he had fallen under the displeasure of the House for suspected connivance at the fraud of his servant Smalley, whose case has already been referred to. Hall's case is the leading precedent for the power of expulsion which the House of Commons has always retained.[1]

Religious legislation in 1584.

Elizabeth's fifth parliament met at Westminster, November 23rd, 1584. Religion and the succession weighed heavily upon both Houses. A bill was passed for the better and more reverent observance of the Sabbath Day. A measure for the utter extirpation of Popery, and chiefly directed against the Jesuits, was also carried through the Commons with little opposition.

Dr. Parry's Case.

Dr. William Parry, however, the member for Queensborough, delivered a violent speech against it, for which he was sequestered the House, and only admitted again on humble acknowledgment of his fault upon his knees. This Dr. Parry was a learned, but vicious and needy man, who had been employed by Burghley to reside abroad and to act as a spy on the English exiles. Returning home, he revealed certain alleged plots against the Queen, while, at the same time, he was himself conspiring against her life. He was denounced by a fellow-plotter and spy, Edmund Neville, and the revelations caused great excitement in the House of Commons. Parry was imprisoned in the Tower, and his seat declared vacant; and Sir Thomas Lucy—Shakespeare's Lucy—was anxious to know whether some new kind of execution could not be devised to accord with his extraordinary and horrible treason. Threats of torture drew a full confession from the would-be assassin. He admitted that he had been urged to murder Elizabeth by Cardinal Como, that he had the Pope's dispensation, and that it was intended to place the Queen of Scots on the throne. He was tried in March 1585, and hanged and quartered for treason.

But the situation was grave and disturbing in conse-

[1] Hatsell and Hallam.

quence of the Popish plots. When the Commons met again in February 1585, after the Christmas adjournment, they took into consideration the state of the nation—adverting to Spain, the Pope, the Holy League in France, and especially Ireland. "That her Majesty did specially shun danger from Ireland, of which they conceived this proverb to be true, '*Look to Ireland, if we will rest quiet in England.*'" The bill against the Jesuits was pushed through; and then, by an act passed in the Lords for the surety of the Queen's person, an "Association" of twenty-four of the Privy Council and House of Lords was formed for making inquisition after all such as should invade the kingdom, etc., or make claim to the crown of England. The invention of this policy of association was attributed by Camden to Dudley, Earl of Leicester; and the first body was formed amid rumours of great dangers, wicked designs, and treacherous practices against the Queen and the State. Then the Earl drew together men of all degrees and conditions throughout England, to bind themselves into an association, by mutual vows, subscriptions, and seals, to prosecute to death, as far as lay in their power, all those that should attempt anything against the Queen.

Popish plots.

When the sixth parliament of the reign met in October 1586, the Lord Chancellor told the Houses that it was summoned for no usual causes; not for making new laws, whereof her Majesty thought there were more made than executed; not for subsidies and fifteenths, but because of the dangers which had been contrived of late. Mary, Queen of Scots, who had brought ruin upon individuals by the spell of her beauty, was now also a menace of civil war and ruin to the nation. Twice the Commons had declared against her, and yet Elizabeth could not be brought to extreme measures. She would even have pardoned her guilty rival if she had only confessed the treason that was now notorious, for the thought of her execution was not only personally distressing to Elizabeth, but by the enemies of England

Trial and execution of Mary, Queen of Scots.

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would be construed into an act of private revenge. At length, on November 5th, the Chancellor set forth "the foul and indiscreet dealings practised by the Queen of Scots against her Majesty and the whole realm"; and after a conference between the two Houses, a joint petition was presented to the Queen for Mary's execution. Still Elizabeth hesitated; but Parliament unanimously voted that there was "no other way" but execution; and the Chancellor and the Speaker went down to Richmond to tell Elizabeth that the clemency so long shown the Queen of Scots had encouraged her dangerous boldness, that to hesitate longer would be sinful, "and would be likely to provoke the anger of Almighty God." The blow at last fell. Condemned by every member of both Houses of Parliament, and convicted also upon her trial at Fotheringay Castle, Mary Stuart, the beautiful, the unfortunate, and the culpable, was beheaded at Fotheringay, February 8th, 1587. There seemed no other way, as the Commons said, to relieve England from treasons and stratagems at home, and the machinations of her enemies abroad. The proceedings of the parliament which condemned Mary differed from those of any that had ever been summoned before in this kingdom. No bills were exhibited, and therefore no acts were passed. The Houses were called only to constitute a higher tribunal, and they asserted a power and a right which were once more used by the Commons in the subsequent reign of Charles I.

The Spanish Armada.

Mary's death shattered the schemes of the Scottish and English Catholics, but drove Philip of Spain to bolder measures. He fitted out the formidable Spanish Armada, but this warlike movement was destined to find no support in England. The whole nation rallied with great enthusiasm round the Queen. When Parliament met in February, 1587, it immediately set about the defence of the country in view of the Spanish invasion, and voted a subsidy. British valour, aided opportunely by the winds of Heaven, broke up and destroyed the great Spanish fleet. There never was a more complete and

ignominious collapse of an unjustifiable attempt against the liberties of a nation.

The Royal authority.

Certain bold spirits of the House of Commons came into collision with the authority of the sovereign in the session of 1587-8. In February, one Mr. Cope offered to the House a bill and a book, the former annulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of Common Prayer contained in the latter. The adventurous member was promptly extinguished, for the Speaker interposed to prevent his bill from being read, on the ground that her Majesty had commanded them not to meddle in this matter. Several members took up the question, however, and it was warmly debated. But after the House separated the Queen sent for the Speaker, and commanded him to deliver up to her the bill and book. In consequence of this, on March 1st Mr. Wentworth delivered to Mr. Speaker a number of questions touching the liberties of the House, and demanded that they should be read. Serjeant Pickering, the Speaker, said he would peruse them, and then do what was fit. The following were the pertinent questions formulated by Mr. Wentworth: "Whether this Council be not a place for any member of the same here assembled, freely and without controulment of any person, or danger of laws, by bill or speech, to utter any of the griefs of this Commonwealth whatsoever, touching the service of God, the safety of the Prince, and this noble Realm? Whether that great honour may be done unto God, and benefit and service unto the Prince and the State, without free speech in this Council, which may be done with it? Whether there can be any Council, which can make, add to, or diminish from, the laws of the realm, but only this Council of Parliament? Whether it be not against the orders of this Council to make any secret or matter of weight, which is here in hand, known to the Prince or any other, concerning the high service of God, Prince, or State, without the consent of the House? Whether the Speaker, or any other, may interrupt any member of this

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Council in his speech used in this House, tending to any of the forenamed high services? Whether the Speaker may rise when he will, any matter being propounded, without consent of the House, or not? Whether the Speaker may overrule the House in any matter or cause there in question; or whether he is to be ruled or overruled in any matter, or not? Whether the Prince or State can continue, stand, and be maintained without this Council of Parliament, but by altering the government of the State?"

Members imprisoned.

The Speaker did not think proper to put these questions to the House, but instead thereof got Mr. Wentworth committed to the Tower. Next day Mr. Cope and those who had spoken in favour of his motion shared the same fate. The House demanded their release, but they were not set at liberty until the dissolution, which occurred three weeks later.

Privileges and grievances.

In the next parliament, which met in November 1588-9, the constitutional battle was renewed. Sir Edward Hobby complained that several particulars of a speech he had made had been reported out of the House, for which he had been sharply rebuked by a very great person. He prayed that a bill to prevent certain exactions made for their own profit by the officers of the Exchequer might be committed. He was interrupted by the Chancellor of the Exchequer, but when the latter sat down the House read and committed the bill, on the motion of Sir H. Knyvet. This measure was sent to the Lords, together with one intended to restrain the flagrant abuses of purveyance. The Queen expressed her dislike of this meddling with abuses, which she was herself willing to repress, if they existed; and after a search for precedents and much memorialising, her Majesty declared her willingness to afford a remedy for the alleged grievances.

Persecution of the Puritans.

The growth of Puritan feeling, against which an act had been passed in 1581, led to the establishment of the High Commission Court in 1583. In its powers, with the exception of the punishments by torture and death, this Court was a very near approach to the Roman

Inquisition. But it did not secure the effects of uniformity intended, and in 1591, Thomas Cartwright, Lady Margaret Professor of Divinity at Cambridge, and a number of his associates, endeavoured to establish Presbyterianism in England. They were prosecuted first by the High Commission Court, and afterwards by the Star Chamber, but ultimately liberated upon satisfying the latter court on the question of the Queen's supremacy. In 1593 Parliament was induced to pass an act subjecting Protestant nonconformists to penalties similar to those already imposed upon Popish recusants. This legislation, together with the injustice with which political trials were conducted, drove the Puritans into an antagonistic attitude towards the Crown, which became formidable during the earlier part of the next century.

Parliament of 1593.

Elizabeth was extremely jealous of any interference by Parliament with the Church and the clergy, and for nearly four years at this period she refrained from calling the Houses together. At last, on February 19th, 1593, her eighth parliament assembled at Westminster. Lord Keeper Pickering told the members that the few good hours they had must not be "lost in idle speeches." The time must be wholly bestowed on such businesses as were needful: "whereas heretofore it hath been so used, that many have delighted themselves in vain orations, full of verbosity and of vain ostentations, more than in speaking of things of substance." On February 22nd, the Queen being again come to the Upper House, the Commons presented Edward Coke, Esq., Solicitor-General, as their Speaker. In answer to the new Speaker's demand for liberty of speech, the Lord Keeper said it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter"; their privilege was Aye or No. "Wherefore, Mr. Speaker, her Majesty's pleasure is, that if you perceive any idle heads, which will not stick to hazard their own estates; which will meddle with reforming the Church and transforming the Commonwealth, and do exhibit any bills to such purpose, that you receive them not until they be viewed and considered

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by those who it is fitter should consider of such things, and can better judge of them."

The Succession.

This adjuration was probably intended to point by anticipation at any unpleasant debate that might arise; but if so it failed of its effect. On the very first meeting of the Commons for the despatch of business, the indomitable Mr. Peter Wentworth, supported by Sir H. Bromley, presented a petition, desiring "the Lords of the Upper House to join with them of the Lower in imploring her Majesty to entail the succession of the crown, for which they had already prepared a bill." Elizabeth was indignant at this somewhat unparliamentary proceeding, and the mover and seconder, and two other members, were brought before the Privy Council, and committed to different prisons.

Motion by Francis Bacon.

During this session we first meet with one of the most illustrious names in English law, government, and literature. Mr. Francis Bacon, rising in the House of Commons on February 26th, 1593, touching the question of supply, spoke to this effect: "The cause of assembling all parliaments hath been hitherto for laws or money; the one being the sinews of peace, the other of war. To the one I am not privy, but the other I should know. I did take great contentment in her Majesty's speech the other day delivered by the Lord Keeper, how that it was a thing not to be done suddenly nor at one parliament. Scarce a whole year would suffice to purge the Statute Book, and lessen the volume of laws; being so many in number that neither common people can practise them, nor the lawyer sufficiently understand them, than the which nothing should tend more to the praise of her Majesty. The Romans appointed ten men who were to correct and recall all former laws, and to set forth those twelve tables so much of all men to be commended. The Athenians likewise appointed six for that purpose. Lewis IX., King of France, did the like in reforming his laws." Mr. Bacon then moved the appointment of a select and grave committee, both to consider of the dangers of the realm, and of speedy supply and aid to

her Majesty. A committee was accordingly nominated. A few days later, when the Lords desired the Commons to confer with them on the granting of a subsidy, Mr. Francis Bacon rose in defence of the privileges of the Lower House. It was for the Commons, he said, to originate a subsidy; and the House, taking his view, affirmed its right by 217 to 128 votes.

Money grants.

The Commons voted a considerable sum of money, but not without an addendum that "these large and unusual grants, which were made to a most excellent Princess, on a most pressing and extraordinary occasion, may not at any time hereafter be drawn into a precedent." Various members who had been imprisoned were not released before the rising of Parliament; on the contrary, their numbers were added to, for we read that "divers gentlemen who were of the Parliament, and thought to have returned into the country after the end thereof, were stayed by her Majesty's commandment, for being privy, as it is thought, and consenting to Mr. Wentworth's motion."

A diffident Speaker.

The ninth parliament of Queen Elizabeth assembled at Westminster, October 24th, 1597. The Commons elected as their Speaker Mr. Serjeant Yelverton, but in a very plaintive and amusing speech he sought to excuse himself. He had no merits, he pleaded, no ability, and no estate save a bare annuity as a younger son. Moreover, he had taken a wife, by whom he had many children, "the keeping of us all being a great impoverishment to my estate, and the daily living of us all nothing but my daily industry." Then he very ingeniously, but also unflatteringly, discounted his personal merits: "Neither from my person or nature doth this choice arise, for he that supplieth this place ought to be a man big and comely, stately and well spoken, his voice great, his courage majestical, his nature haughty, and his purse plentiful and heavy: but contrarily, the stature of my body is small, myself not so well spoken, my voice low, my carriage lawyer-like and of the common fashion, my nature soft and bashful, my purse thin, light, and never

His strange pleas.

yet plentiful. Wherefore, I now see the only cause of this choice is a gracious and favourable censure of your good and undeserved opinions of me. But I most humbly beseech you, recall this your sudden election." The Commons, however, refused to annul their choice, and Mr. Yelverton was in due course presented as Speaker. According to the custom of later Protestant parliaments, the new Speaker every morning read a prayer which he had made, and a very excellent prayer it was.

Monopolies.

Not much business was transacted during this parliament, but it presented an address to the Queen against the enormous abuse of monopolies. The Crown was in the habit of regulating almost all matters of commerce at its discretion, and it lavishly dealt out patents, which practically secured a monopoly in very important articles of food and clothing. Ministers were loth to give up this power, and so protracted the monopoly business till the very last day of the session. When the Lord Keeper came to take note of the subject, he promised for the Queen to examine all patents, and to abide by the touchstone of the law.

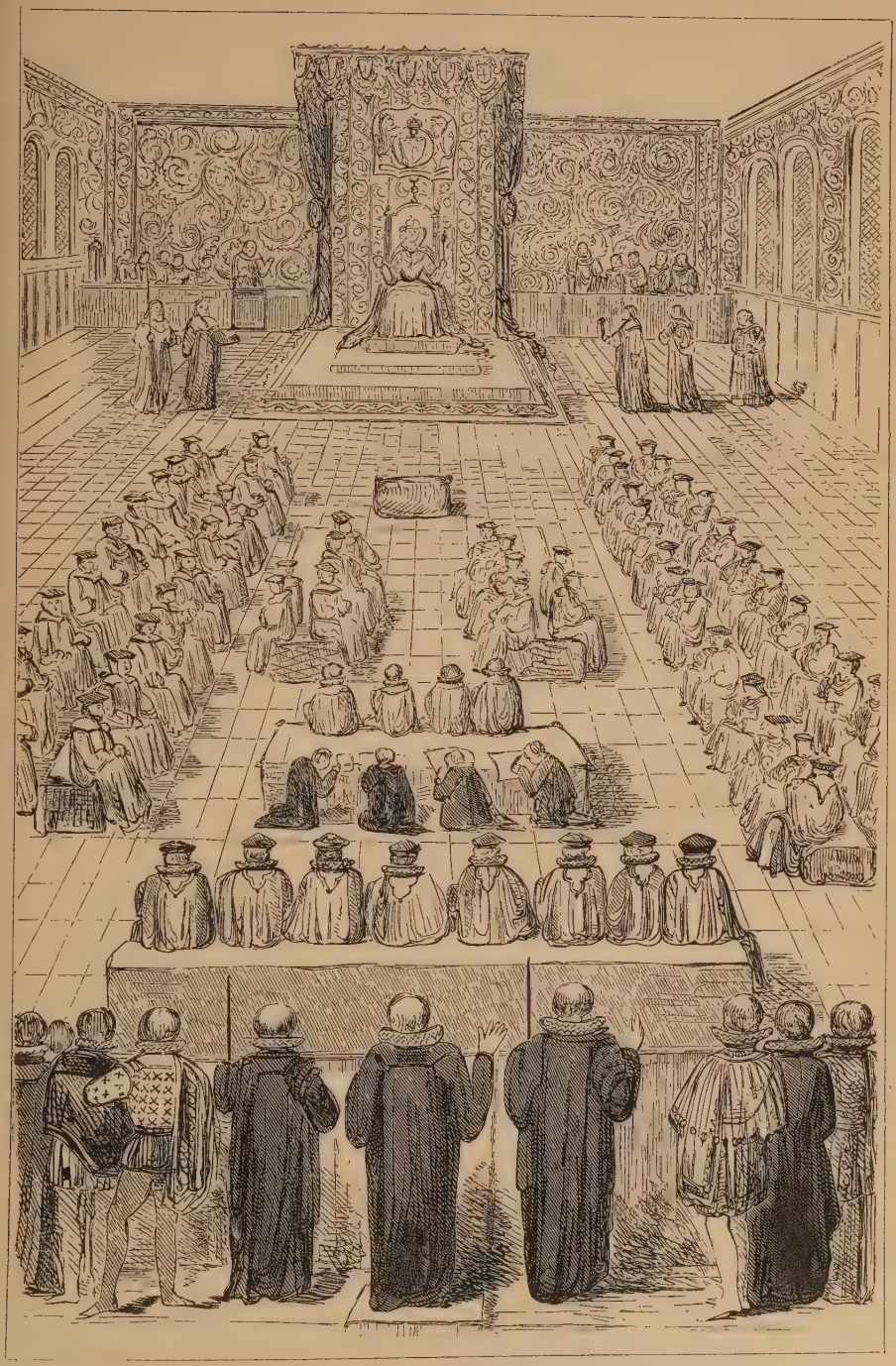
Elizabeth's last Parliament.

Elizabeth's tenth and last parliament met at Westminster, October 27th, 1601. Sir Robert Cecil reported that a chief member was lacking, a knight for Denbighshire, as, in consequence of a great riot and disturbance on the County Court day, the sheriff had been unable to execute the writ. He therefore moved that Mr. Speaker should attend my Lord Keeper in the matter. Sir Edward Hobby protested against the word *attend*. "The Speaker is the mouth of the whole realm; and that the whole state of the Commonalty should attend one person, I see no reason." A bill was brought in "to repress the multitude of common solicitors, who set dissensions betwixt man and man, and, like a snake cut in pieces, crawl together to join themselves again, to stir up evil spirits of dissension."

Bill against solicitors.

Monopolies condemned.

The House of Commons again attacked the monopolies, and this time in a bolder spirit. There was so much excitement and confusion that Secretary Cecil said the



QUEEN ELIZABETH'S PARLIAMENT. (*From an Engraving of the Period.*) *k*

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH
LIBRARIES

like was unequalled in his experience. When a list of the oppressive patents was read, a member exclaimed, "Is not bread among the number? Nay, if no remedy is found for these, bread will be there before the next parliament." The debate occupied four days. Sir Walter Raleigh, who had been a gainer by certain monopolies, offered to give them up. Ultimately, the Queen consented to revoke all grants that should be found injurious by fair trial at law, but Cecil afterwards carried the concession further than this, giving an express assurance that the existing patents should all be repealed, and no more be granted. It appears by the Lords' Journals that almost the whole business of this session was trying complaints upon breaches of privilege. There was, however, considerable discussion over a bill for compelling attendance at church. When a vote was taken upon it there were 105 ayes and 106 noes. Mr. Bowyer complained that there had been great and foul abuse; "a gentleman who would vote according to his conscience was pulled back." Sir Walter Raleigh made light of this: "It is a small matter to pull one by the sleeve, for so I have done myself oftentimes." Great uproar ensued, and the question of the Speaker's casting vote arose, but Mr. Secretary Cecil said, "The noes were 106, the ayes 105; the Speaker hath no voice; and, though I am sorry for it, the bill is lost, and farewell to it." [1]

Death of Elizabeth.

The Houses were prorogued in December, 1601, and before Parliament again assembled Elizabeth had passed away. She died March 24th, 1603, in the seventieth year of her age. She had little pleasure in life after the death of her favourite, the Earl of Essex. This truly great sovereign—for such she was notwithstanding all her defects, grave or trivial—had by her State policy done much for England, at home and abroad. As regards religious and general legislation, her reign was of

[1] The Charity Commission practically had its origin this session in a statute passed "to redress the misemployment of landes, goodes, and stockes of money heretofore given to charitable uses."

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the utmost importance. Looking first at its ecclesiastical aspects, the Anglican State Church of Elizabeth is the fusion of the external and internal sides of the Reformation. While the royal supremacy of Henry VIII. was restored, the reforming work of Edward VI. was completed. Never was so mighty and salutary a change effected in a nation's history with less disturbance. "The Anglican Church is no longer a political system, but an honest Protestant faith, which constitutes itself as a Church, in the fixed intent to act rightly and in a Christian spirit."[1]

The Reformation completed.

The Parochial system.

The development of the parochial system under the Tudor dynasty was another notable feature of popular progress. Stowe reported that the number of parishes in the kingdom in the year 1371 amounted to 8,632; whereas by the year 1520 their number had risen to 9,407. From this time forward the Church ceased to be the guardian of the poor, and the Government undertook the work, statutes being enacted for that purpose. When once the Crown and Parliament had taken the direction in this matter, the line of legislation remained unaltered in character. Towards the close of the sixteenth century the alarming increase of professional beggars and vagrants led to the appointment of a committee (upon which Sir Francis Bacon sat) to take into consideration the necessary measures of public charity, of enforced employment of paupers, and of the punishments to be inflicted for mendicity and vagrancy. The Statute 43 Elizabeth c. 2, which through the succeeding centuries continued to regulate the system of poor relief, embodied provisions which had been in vogue for generations touching the supervision of the poor and police. These were the leading principles of Elizabeth's great poor-law: first, the relief of the poor was the general and uniform burden of each parish; secondly, for the personal functions of this poor relief the parochial office of overseers of the poor was created; and thirdly, there was provision for the levying of a poor-rate by the churchwardens and overseers. As a further evidence of the care of the State

Relief of the poor.

[1] Gneist's *History of the English Constitution.*

for the well-being of the people, the Tudor legislation likewise provided for the maintenance of the highways and the building of bridges. Finally, the general effect of this legislation was that the old village constitution and the new system of parochial rates became consolidated, while the newly-constituted parish was henceforth immediately connected with the county police administration, and especially with the county magistrates.

Elizabeth and her Parliaments.

From the parliamentary aspect, Elizabeth's reign was very noteworthy. It is true that, like some of her predecessors, she ruled very largely through the medium of the Privy Council, individually or collectively; and also that she summoned her parliaments only from necessity, and that she regarded the two Houses as mere instruments of taxation. But there were abundant signs of the beginning of the end before Elizabeth's reign closed. Although the Commons were periodically commanded not to meddle with matters touching the sovereign's person, estate, or Church government, they again and again asserted their rights as representatives of the people, and their determination to deal with the many grievances affecting the Commonwealth. They already looked upon themselves as something more than the holders of the purse-strings of the nation, and their independence was soon to bring them into direct conflict with the Crown. Elizabeth's ministers, Hatton, Cecil, and Knollys, not only sat among the Commons, but took a leading part in the discussions: a proof that the influence of argument could no more be dispensed with than that of power.[1] And whenever the right of argument on equal terms is conceded, it will go further than prerogative in moulding the destinies of a people.

Elizabeth added during her reign sixty-two members to the House of Commons;[2] but owing chiefly to the lack of

[1] Hallam's *Constitutional History of England.*

[2] Many of the boroughs created or restored by Elizabeth and her immediate predecessors were rotten boroughs, added to the representation for the purpose of counteracting the growing independence of the Commons—which was shown, among other methods,

Growing power of the Commons.

public spirit there were rarely in attendance at the House more than 200 or 250 members. The great majority were creatures of the ministry. Nevertheless, some progressive constitutional stages were reached. In the session of 1571 the important principle that each member of the House of Commons is deputed to serve, not only for his constituents, but for the whole kingdom, was asserted. Nor were the members of the House of Commons too humble in spirit or insignificant to claim those growing immunities which are now recognised under the privileges of Parliament. We have seen how many of these privileges came to be established. The House also asserted its right to inflict punishment on its own members, as in the case already cited of Arthur Hall, member for Grantham. The Commons further claimed the privilege of determining contested returns. Several times during Elizabeth's reign the Commons complained of the conduct of the Lords as being detrimental to their dignity and privileges. It is also important to note that it was by no means universally admitted that the English constitution was an absolute monarchy. Elizabeth's ministers took an exaggerated view of the powers of the Crown, but the Lower House insisted upon a broad line of demarcation between the prerogative of the sovereign and the rights of the people.

England under the Tudors.

England under the Tudors was slowly gathering strength for the assertion of parliamentary government in its full strength. The age was one of activity and movement, intellectually and commercially. Elizabeth and her immediate predecessors impressed themselves upon it without destroying the germs of liberty which lay deep down embedded in the soil. England was once more a great nation, and beneath all its intellectual and material splendour there was a mighty heart beating, which ere long was to find its aspirations realised in the marvellous triumphs of constitutional freedom.

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by their rejecting bills promoted by the Crown. In Henry VIII.'s reign there was only one such instance, but under Edward VI. and Mary the Commons on several occasions rejected bills.

BOOK VI.

THE STRUGGLE WITH THE CROWN.

CHAPTER I.

JAMES I. AND HIS PARLIAMENTS.

Character of James.

The imperious Elizabeth was succeeded by James I., a monarch who vainly sought to rivet the chains of monopoly and the royal prerogative upon the nation; but such a pedant as James could not put back the impending struggle between the Crown and the people. Indeed, it was the fate of this learned, quixotic, and disputatious sovereign to precipitate a controversy upon Divine right which could find no settlement but the sharp solution of the axe in the reign of his tyrannical son.

The King's title.

Though the legal right to the throne was, under the last will of Henry VIII., vested in the House of Suffolk, James succeeded by the custom of primogeniture and hereditary right, and the vast body of the nation welcomed his accession. He had also been named by Elizabeth as her successor. It is probable, as Hallam has observed, that the consciousness of the defect in his Parliamentary title caused James to magnify, still more than from his natural temper he was prone to do, the inherent rights of primogenitary succession, as something indefeasible by the legislature; a doctrine which, however it might suit the schools of Divinity, was diametrically opposed to the English statute law. Be that as it may, under James the crown soon became practically settled beyond the power of disturbance, while the government of England and Scotland by one sovereign was of manifest advantage to both countries.

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James I. and his Parliaments.

His policy.

The King, whose life in Scotland had been made a burden to him by the plotting of his lords, determined to put his foot down in the outset with his new subjects. His resolution was most short-sighted and foolish. Crowned on July 25th, 1603, he had reigned but a few months when he plunged into the throes of an ecclesiastical controversy, in which his soul delighted. He manifested his preference for High Church tenets, and summoned representatives of the Puritan or Nonconformist party to the famous conference at Hampton Court. The Puritans lost their cause, whether by argument matters little to the fact, and they were punished; while at the other ecclesiastical extreme, the Jesuits and Seminary priests were ordered to leave the kingdom. The summary measures against the Papists led to the abortive Gunpowder Plot. In the midst of chronic difficulties with Parliament, Cecil died, and James took into favour Robert Carr, afterwards Earl of Somerset. In 1609 the colonisation of the North of Ireland began; and in 1612 Henry, the Prince of Wales, died. Then followed in rapid succession the exposure of Somerset, and his shameless wife; the rise of a second favourite, George Villiers, Duke of Buckingham; the negotiations for peace and alliance with Spain; the execution of Sir Walter Raleigh; the proposals for a marriage between Prince Charles and the Spanish Infanta; then the quarrel with Spain, and the negotiations for a marriage between Prince Charles and Henrietta Maria, the French Princess; and finally, the death of James before this latter union had been celebrated.

Its arbitrary nature.

These were the main historical incidents of the reign; but the real interest for Englishmen in this monarch's rule, as in that of his successor, lay in the Crown's incessant struggles with Parliament. Immediately upon his accession, James issued a proclamation, setting forth, in pompous and swelling language, the bases of his hereditary right. Having thus struck the keynote of his policy, he proceeded to copy the arbitrary proceedings of his predecessor. Professedly great in kingcraft,

James herein made a cardinal mistake. He had neither the prestige nor the personal power of Elizabeth, and it was madness on the part of one who was practically an alien thus to attempt to ride rough-shod over the constitutional privileges of the English people.

James's first Parliament.

James summoned four parliaments, and had bickerings with all. Owing to the dreadful visitation of the Plague in 1603, which carried off thirty thousand people in London and the vicinity, the first of these parliaments did not assemble until March 19th, 1604. To the House of Commons, 467 members were returned, who were thus distributed: knights, 231; esquires, 140; gentlemen, 71; merchants, 9; mayor, 1; aldermen, 9; doctors of law, 4; serjeant-at-law, 1; and one nobleman, Lord Clinton and Saye. The counties were very unequally represented, for while Cornwall had 44 members, and Wiltshire 34, Westmoreland had only 4, and Northumberland 8. The earliest act of this parliament was an acknowledgment that, immediately on the decease of Elizabeth, "the imperial Crown of the realm of England did, by inherent birthright, and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully next and sole heir of the blood royal of this realm." The writs for the parliament had been issued under a royal proclamation which assumed control of the elections, and fines and imprisonment were threatened if its injunctions were traversed. This was a direct infringement of the privileges of the House of Commons, but it was what might have been expected from the author of the treatise on *The True Law of Free Monarchies*, which put the King over all law.

The Crown.

An election difficulty.

James and his Commons soon came to an issue. Sir Francis Goodwin, an outlaw, had been returned for the county of Buckingham contrary to the tenor of the proclamation. The return was sent back to the sheriff, and on a second election Sir John Fortescue was chosen. The matter was brought under the consideration of the House of Commons, when it was decided that Goodwin had been lawfully elected and returned, and must be

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received. The Lords demanded a conference of the two Houses to discuss the return, but the Commons declined to give an account of their proceedings. Eventually, James, "as an absolute king," commanded that there should be a conference between a committee of the Commons and the judges, in presence of the King and his council. Sir Francis Bacon complained with regard to this conference, "That we did more now to King James, than ever was done since the Conquest, in giving account of our judgments." James suggested that the return of both Goodwin and Fortescue should be quashed, and a new writ issued. This compromise was agreed to by the Commons, who regarded it as a virtual victory for themselves; and certainly from this time forward no attempt was made to challenge their exclusive jurisdiction.

Privilege of parliament asserted.

Another question of privilege shortly afterwards occupied the attention of the Commons. A certain member, Sir Thomas Shirley, having been taken in execution for a private debt, and cast into the Fleet, the House was perplexed how to effect his release. The King was moved to command the Warden of the prison, on his allegiance, to deliver up Sir Thomas; and this step proved effectual. Six members, with the Serjeant and mace, received him and brought him to the House. But in consequence of the Warden's apprehensions that he had exposed himself to an action for the debtor's escape Parliament passed a statute empowering a creditor to sue out a new execution against any one who should be delivered by virtue of his privilege of Parliament (after that should have expired), and discharging from liability those out of whose custody such persons should be delivered. "This is the first legislative recognition of privilege." The most important section of the act was the following appended proviso upon the right of commitment: "That nothing therein contained shall extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person who hereafter shall make, or procure to be made, any such arrest as is aforesaid."

The House of Commons passed the usual bill granting tunnage and poundage for life, but was evidently so loth to grant a subsidy that the King sent a message declining any further subsidy, whereupon it was resolved that the King's letter be recorded for an everlasting memory of his Majesty's grace. The two Houses held a conference respecting a book written by the Bishop of Bristol on the question of the Union. His lordship was severely reproved by the Peers, and he made humble confession of his error "in presuming to deliver a private sentence on a matter so dealt in by the High Court of Parliament." He pleaded that it was done out of ignorance and not out of malice, and because of his affection for the Union. Upon this the Lords loosed him, and let him go.

The Commons and the King.

A Bishop reproved.

Lord Montague, however, who incurred the displeasure of the House of Lords on an ecclesiastical question, was not quite so fortunate. A bill having been read a third time for the due execution of the statutes against the Jesuits, etc., his lordship rose, and not only declared his open and earnest dissent, but undertook the defence of the Popish religion. He intreated the Lords not to give the bill passage, observing, "We have been misled to forsake the religion of our fathers, and to follow some light persons." Four bishops, Bath and Wells, London, Winchester, and St. David's, replied to him, and on the following day it was ordered that Lord Viscount Montague be committed to the Fleet till further order. After a week's imprisonment his lordship was released on making humble submission.

Lord Montague's case.

On June 25th, 1604, the Commons determined a constitutional point affecting themselves. It was resolved, that from and after the end of the existing parliament, no mayor of any city, borough, or town corporate should be elected, returned, or allowed to serve as a member of the House; and if it did appear that any mayor were returned a burgess, then a new writ should be issued for the election of a member in his place; and this to continue as an act and order of the House for ever.

Mayors disqualified.

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Parliament vindicates itself.

The Preface in the official records relating to James's first parliament is remarkable. It describes in the outset the origin of governments, and then passes on to the institution of Parliaments, and "the custom, and in a manner the necessity, of assembling at the City of Westminster, adjoining to the City of London"; stating also the cause of deferring the meeting on account of the dangerous contagion of pestilence which had prevailed, but was then abated. The King was greatly discontented at the proceedings of the first session of the Parliament, but these were justified in an admirable vindication prepared by a committee appointed by the Commons, and entitled, "A Form of Apology and Satisfaction to be delivered to His Majesty." James was presumably not pleased either with the Apology or the Satisfaction, for the document asserted in unmistakable language the constitutional rights and liberties of Parliament.

Claims of the Commons.

In order to demolish the idea that the English monarchy was of an absolute character, as well as to claim their own freedom, the Commons formulated these six propositions: "1. That their privileges and liberties are their right and inheritance, no less than their very lands and goods; 2. That they cannot be withheld from them, denied or impaired, but with apparent wrong to the whole state of the realm; 3. That their making request, at the beginning of a parliament, to enjoy their privilege, is only an act of manners, and does not weaken their right; 4. That their House is a court of record, and has ever been so esteemed; 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of Parliament, which, with his Majesty's royal assent, gives law to other courts, but from other courts receives neither laws nor orders; 6. That the House of Commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire." They further averred that in no

previous Parliament had the privileges of the House been more universally and more dangerously impugned than in the late session. Not privileges, but the whole freedom of the Parliament and the realm had been hewed from them; and they thus indicated the serious dangers which threatened the people of England: "What cause we, your poor Commons, have to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily, and do daily, grow. The privileges of the subject are, for the most part, at an everlasting stand. They may be by good providence and care preserved; but being once lost, are not recovered but with much disquiet."

Gunpowder Plot.

The second session of the first parliament began on that memorable day, November 5th, 1605. The incident associated with Guy Fawkes and the Gunpowder Plot is thus described in the official journals: "This night, the Upper House of Parliament is searched by Sir Thomas Knevett. Johnston, servant to Mr. Thomas Percey, is there apprehended. Thirty-six barrels of gunpowder had been placed by him in the vault under the House, with the purpose of blowing up the King and the whole Assembly when they met." Fawkes, the pretended servant of Percey, was arrested, and the judgment which overtook him and the other Catholic conspirators is matter of history. It should be stated, however, that the Roman Catholics of England generally were in no way associated with this diabolical plot, which to most of them was very abhorrent.

James's views of Parliament.

The King opened the session on the 9th, and in his speech affirmed that Parliament was nothing else but the Sovereign's great council. It was not a place "for every rash and hare-brained fellow to propose new laws of his own invention," and he could wish these busy-heads to remember the custom of the Lacedæmonians, who hanged the legislator if his law were not allowed; neither was it a convenient place for private men to propose nothing but their own particular gain. Least of all was Parliament a place for members to make a show

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of their eloquence; "no, the reverence of God, their King, and their country being well settled in their hearts, will make them ashamed of such toys." On April 9th, the House of Commons was called over, when there answered from their places 299 members; there were in the House and town, 367. The chief business of the session was a bill for the attainder of "divers offenders in the late most barbarous, monstrous, detestable, and damnable treasons"; and a bill was also brought in against Lord Cobham. The Upper House now established the rule that the same bill could not be proposed twice in the same session. The Commons discussed a liberal subsidy bill, but decided that it should not be passed till their list of grievances was ready to be presented. When the third session began in the following November, the King answered the articles of grievance, defending some of the monopolies complained of, and referring others to the arbitrament of the law-courts.

The Union.

During this third session, James endeavoured to advance his favourite project of a legislative union between England and Scotland. He could not bring the Commons to his mind, however. All that could be obtained was the abolition of the laws in which each people treated the other as enemies and aliens, together with a decision by the English judges, declaring the *post nati*, or Scots born since the King's accession, to be natural subjects of the King of England. The historian Hume charges the Commons with prejudice, reluctance, and obstinacy in this important matter, and greatly eulogises the Unionist speeches of James; but as the Scottish nation, which was the chief body concerned, manifested no enthusiasm, or desire for, the proposed legislative union, the English House of Commons pursued a wise and strictly constitutional course in not accelerating so momentous a change.

King and Commons.

In the course of the debates on the Union, Sir Christopher Pigott used such bold language concerning the King and the Scots, that James complained to the House. "He did much mislike and tax the neglect of the House, in that the speech was not interrupted on the

instant, and the party committed before it became public, and to his Highness's ear." Sir Christopher was committed to the Tower, and his seat as knight of the shire for Bucks declared vacant. The King thought better of his action, however, and soon discharged the offending member from custody. James had assumed the title of King of Great Britain in the second year of his reign, but the Commons declared that they could not legislate for Great Britain, and the title was abandoned. The bickerings between the Crown and the Commons continued for a long period, and James sent frequent messages to the Lower House, which were regarded as infringements of its liberties. In the session of 1607 the merchants presented a petition to the Commons upon the grievances they sustained from Spain, and the House prayed for a conference with the Lords. A conference was granted, and Sir Francis Bacon reports a remarkable speech made by Cecil, Earl of Salisbury. His lordship told the Commons that the decision of all questions affecting peace and war belonged to the King, and added further that the Lower House was not the proper channel through which public grievances, or those of such large bodies as the merchants, ought to be represented to the throne. Nevertheless, precedents existed against both these assumptions.

Royal exactions.

A period of two and a half years elapsed between the close of the third session of James's first parliament and the opening of the fourth session on February 9th, 1610. During the interregnum the constitution was violated by the imposition of duties on merchandise without the consent of Parliament. The barons of the Exchequer having given a judgment in favour of these exactions, the result was the issue of a book of rates, published in 1608 under the authority of the great seal, imposing heavy duties upon nearly all forms of merchandise. This was contrary to the authority of Parliament, for the statute entitled *Confirmatio Chartarum* of 25 Edward I., expressly established that no money could be raised from the subject without the consent of the State. This principle

Book of Rates.

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was again and again reaffirmed by the Commons under Edward III., Richard II., and Henry V., VII., and VIII. When the Houses met in 1610, the Commons protested against the royal enroachments. The King's position must have been weak, when Bacon, who argued the case for the Crown, was, with all his learning, placed in a position of distinct inferiority to a member named Hakewill, who delivered a luminous and convincing speech in favour of the Parliament. The illegality of impositions was clearly established, whereupon the King sent down an imperious message, commanding the House not to enter upon the subject. The Commons protested against this despotic conduct, and in an able remonstrance, claimed their full rights and privileges. They next passed a bill taking away impositions, but it was rejected by the Lords.

Attitude of the clergy.

Meanwhile, the King pursued his foolish policy of claiming absolute power, and he was considerably emboldened by the pliant attitude of the clergy, who placed the authority of the King before that of Parliament, affirming that the former was of God, while the latter was only of man. The clergy had an object of their own to gain by their obsequious action. They desired to obtain the sanction of the Crown to their ecclesiastical pretensions. The doctrine of Divine Right was plainly asserted by a Dr. Cowell in his legal dictionary or *Interpreter*, published in 1610. Cowell's propositions touching the absolute nature of the kingly power were stigmatised as scandalous and offensive by the Commons, and action was at once taken against the author. James found that Cowell had gone too far, and he was obliged from necessity to disavow his indiscreet panegyrist. The *Interpreter* was suppressed by proclamation, and the Commons were naturally very jubilant over their victory.

Grievances remedied.

Lord Salisbury was now desirous of managing the Lower House on the subject of the royal revenue. Money to discharge the King's debts being imperatively necessary, he brought before Parliament a scheme for granting a perpetual yearly revenue of £200,000, and

promised in return, on behalf of the King, to give all redress and satisfaction in his power for any grievances which might be brought forward. The Commons, regarding the opportunity as favourable for once more securing their constitutional rights, advanced a number of ecclesiastical grievances. They complained of the impositions, of the arbitrary and illegal action of the ecclesiastical high commission court, and of the late abuse of proclamations assuming the character of laws. James promised that his proclamations should in future not go beyond the law, and that royal licences to victuallers should be revoked, but he evaded the ecclesiastical and some other points. After much negotiation, the Commons voted the sum of £200,000 as a full composition for abolishing the right of wardship, and dissolving the court that managed it; for taking away all purveyance; and for other concessions, notably one to the effect that the King's claim to lands should be bound by sixty years' prescription. The question of the royal prerogative, and the method of levying the £200,000, were points held over for the present.

James scolds the Commons.

James's first Parliament, which had sat for nearly seven years, was dissolved by proclamation, February 9th, 1611. The King was very angry at certain allusions which had been made to him in the Commons, and in a letter, published in Murden's State Papers, he remarked —"Wherein we have misbehaved ourselves we know not, but . . . our fame and actions have been tossed like tennis-balls among them, and all that spite and malice durst do to disgrace and inflame us hath been used. To be short, this Lower House by their behaviour have perilled and annoyed our health, wounded our reputation, emboldened all ill-natured people, encroached upon many of our privileges, and plagued our people with their delays." The real reading of this is that the Commons had endeavoured to do their duty to the people of England, in resisting the tyranny of James and the blandishments of his extremely corrupt and licentious court.

Creation of Baronets.

By the death of Lord Treasurer Salisbury in 1612, the

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King lost his ablest counsellor. He now turned to his favourite, Robert Carr, afterwards Earl of Somerset, who resorted to various devices for raising money. One of these was the creation of baronets, an hereditary order ranking in power and dignity next to the barons, but not belonging to the peerage. They were to pay £1000 each for their titles, and the object was ostensibly to plant colonies in the north of Ireland. On their escutcheon was the Bloody Hand, the arms of the province of Ulster.

The Undertakers.

Pressing necessity drove the monarch at last to consider by what means he could win over the House of Commons. So far from being able to pay his debts, he could not meet his regular expenses by the last subsidy. Through the influence of Bacon, some of the King's sturdiest opponents had been gained, including Neville, Yelverton, Hyde, Crew, and Dudley Digges. These men, who came to be known by the title of *Undertakers*, endeavoured to manipulate the Lower House in the King's favour, and their conduct gave rise to a kind of parliamentary influence which afterwards played an important part in the system of government. Neville and his middlemen, however, entirely failed in their object, and the court was much chagrined over their broken promises. James accordingly summoned his second Parliament, which met on April 5th, 1614. Having fortified themselves by the ancient records, the Commons passed a unanimous vote against the King's right of imposition of duties. They next proceeded to a conference with the Lords. During the debates Neyle, Bishop of Lichfield, cast certain aspersions upon the Commons,

A Bishop in tears.

whereupon they called him to account, and the Bishop, "with many tears," denied the most offensive words imputed to him. The matter was not further proceeded with, but this incident, together with the branding of "Mr. Chancellor of the Duchy" as an *Undertaker*, and his seclusion until he gave satisfaction, fully attested the temper of the Lower House. The House consisted of 472 members, of whom 300 were not in the previous

Parliament. James could do nothing with the Commons, although he sent for them, and tore up all their bills before their faces in the banqueting-house at Whitehall.

Parliament dissolved.

After sitting for two months, the Parliament was dissolved, without having passed a single bill, a fact unprecedented in parliamentary history. In manifest violation of the privileges of the Commons, several members were arrested for speeches against the Government, and kept for some time in custody.

The King's arbitrary acts.

The King then resorted to the old and discredited system of benevolences in order to exact money. Having been unable to obtain anything from his "Addled Parliament," as it was called, he became his own tax-master. Besides collecting benevolences, he sold patents of peerages, and let out to private individuals various monopolies, thus violating anew the principles of the Constitution. He next quarrelled with his judges on the question whether the sovereign had power to grant a benefice to a bishop to be held *in commendam*—that is, together with his bishopric ; and upon their management of this matter he forced a humble apology from the judges, while he suspended the disaffected Chief Justice Coke from his office.

The Star Chamber.

The proceedings of the Star Chamber also became a scandal to the nation, and however Parliament might assert its general privileges, that tyrannical body overrode every personal right. The King's harsh and illegal treatment of Arabella Stuart, his conduct in the Overbury case, and his execution of Sir Walter Raleigh for the alleged offence of high treason committed fifteen years before, all tended to increase the popular resentment against this unjust and headstrong monarch.

Parliament of 1621.

A new parliament, the third of the reign, met at Westminster, January 30th, 1621. In his opening speech, the King endeavoured to smooth over the differences with his subjects, though the old imperious temper was now and then seen in his utterances. Yet he even made a joke about the "strange kind of beast called *undertaker*," who was in the last parliament, and he took some

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blame to himself for past disagreements. Sir Edward Coke, who was more prominent in the debates of the new parliament than any other member, inveighed against the King's proclamations, and moved for a committee of the whole House for grievances.

Mompesson's impeachment.

The House attacked the monopolists, and one of the most notorious of them, Sir Giles Mompesson, left the country. It was resolved, in conjunction with the Lords, to proceed against him by impeachment, this being only the third case of the kind. The first was that of Lord Latimer in 1376, and the second, that of the Duke of Suffolk in 1449. Some have cited another case, that of the Bishop of London in 1534, but this was not upon all fours with the others, nor did it support the privilege of the Commons. Mompesson was found guilty, and the Lords passed upon him as heavy a sentence as could be awarded for misdemeanour, while James added to it the penalty of banishment. Other impeachments followed, including that of Field, Bishop of Llandaff, who was implicated in a charge of bribery. But the most famous impeachment was that of the Chancellor Bacon for receiving bribes from suitors in his court. The Lords, after hearing witnesses in Bacon's case, were convinced of his guilt, and the great chancellor himself made no defence, but appealed to the mercy of their lordships and the King. Of recent years the most important accusations against Bacon have been closely sifted in the light of new evidence, and he has been acquitted of the charge of having knowingly and corruptly sold or delayed justice. With unpardonable carelessness he appears to have accepted money corruptly tendered, but without a corrupt motive. He was fined and imprisoned, but the fine was remitted, and he was released from the Tower in two or three days. Broken-spirited, he now quitted the political sphere, and devoted himself to literary work.

Impeachment of Bacon.

The Commons were generally to be commended for their crusade against public delinquents ; but there was one case which did not redound to their honour, or to that of the Upper House. A Roman Catholic gentleman,

named Floyd, who was in the Fleet prison, uttered some words in disparagement of the Elector Palatine and his wife. The Commons became furious over the circumstance, and Floyd was pursued with the utmost rigour. The Lords adjudged him to be degraded from his gentility, to be counted as an infamous person whose testimony could not be received, to stand twice in the pillory, to be whipped at the cart's tail from the Fleet to Westminster Hall, to pay a fine of £5000, and to be imprisoned in Newgate for life. On the intercession of Prince Charles the whipping was remitted, but the rest of the infamous sentence for Floyd's trivial offence was actually carried out. As Hallam says, "the cold-blooded deliberate policy of the Lords is still more disgusting than the wild fury of the Lower House."

Floyd's case.

Three important questions of order and privilege arose in the Lords at an early stage of this Parliament. The first reflected upon two of the highest officials in the realm. The Lord Chamberlain reported to the House that at the last conference with the House of Commons, two *great lords*, the Lord Chancellor and Lord Treasurer, spoke in their own defence; "not being allowed so to do when committees are named, and the said conference directed and limited by this House; which was against the ancient orders thereof." His lordship therefore moved that an order be entered to prevent the like hereafter. The motion was agreed to, with the addition, "That the said Lords shall give the House satisfaction, by an acknowledgment of their error." The Lord Chancellor and Lord Treasurer thereupon acknowledged, that, contrary to the orders of the House, they had spoken at the last conference more than they had by direction of the House to do, and had erred therein. The House further decided that henceforth no lords were to be called *great lords*, because they were all peers. As regards the second case, which was one of order, a "jarr" having taken place between the Earl of Berkshire and the Lord Scrope, and the former having "pushed or thrust the latter forcibly in the House against the dignity of it," he was called to the

Order and privilege.

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bar of the House, censured, on his knees, by the Lord Chancellor, and committed to the Fleet. The Earl was not released until he had made his submission in writing, when he was discharged on the motion of Lord Scrope. The third matter concerned the protestation upon honour. The King having understood that the peers conceived it to be a privilege to protest only upon their honour, and not to be put to their oath, the Lords attended his Majesty as a committee of privileges. The King desired them to answer ingenuously whether they thought protestation upon honour, or oath, to bind them more, whereupon the Lords answered with one voice, "Protestation upon honour, as being the same before God and before the world; and in regard to the trust given to their degree, a far greater charge." Upon this declaration, the King willingly agreed to the privilege.

James and the Parliament.

Parliament did some work which was grateful to James, and there was a temporary truce between the Sovereign and the Commons. Two subsidies were voted without protests of any kind; but soon after difficulties again arose. The Commons were proceeding with certain bills for the reformation of abuses, when they were commanded to adjourn over the summer. When the two Houses met again, after the lapse of five months, a conference took place between them. Lord Digby explained that the embassy to Germany for the restitution of the Palatinate had failed, and if war were resorted to, a vote of £900,000 would be necessary to maintain a sufficient army in the Palatinate for one year. But after prolonged debate, the Commons only voted one subsidy, amounting to £70,000, which was wholly inadequate to the object in view. The King was glad of this excuse to abandon the projected war, and nothing further of a disputatious nature occurred until the Commons, at the instance of Sir Edward Coke, drew up a petition and remonstrance against the growth of popery, wherein they suggested that Prince Charles should marry one of the Protestant religion, and that the King should act against that Power (indicating Spain) which first maintained the

war in the Palatinate. James obtained a copy of the petition before it could be presented, and sent an angry letter to the Speaker, directing him to acquaint the House with his pleasure that none therein should presume to meddle with anything concerning his government, or mysteries of State. Touching the imprisonment of Sir Edwin Sandys, a member of the House of Commons, his Majesty said that he had not been committed for any misdemeanour in Parliament, though he (the King) thought himself very free and able to punish any man's misdemeanours in Parliament, as well during their sitting as after.

Protest of the Commons.

The Commons remonstrated against the kingly assumptions, and especially laid stress on the assertion that their privileges only existed by sufferance. James replied, and the discussion attained great heat. Finally, on December 18th, 1621, the Commons entered upon their journals the following famous Protest, which may well be regarded as one of the landmarks in our constitutional history: "The Commons now assembled in Parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges and jurisdictions of Parliament, amongst others not herein mentioned, do make this protestation following:—That the liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, state, and the defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and of good right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; that the Commons in Parliament have like liberty and freedom to treat of those matters in such order as in their judgments shall seem fittest; and that every such

member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by censure of the House itself) for, or concerning, any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business; and that if any of the said members be complained of, and questioned for anything said or done in Parliament, the same is to be showed to the King by the advice and assent of all the Commons assembled in Parliament before the King give credence to any private information."

The King's anger.

James was furious, for he looked upon all the privileges of Parliament as springing from the grace and favour of himself and his predecessors. Unable to bring the Parliament to subjection, he dissolved it on February 8th, 1622. Before taking this step, however, he called a meeting of the Council, sent for the Journal of the Lower House, and with his own hand erased from it the protest of the Commons. He published a declaration setting forth the causes which had provoked him to this extraordinary measure, and committed to prison several of the popular leaders, including Sir Edward Coke, Sir Robert Phillips, and Mr. Pym, whom he described as "ill-tempered spirits." The Earl of Oxford was also committed to the Tower. For the first time in our parliamentary history, a considerable section of the House of Lords was now arrayed on constitutional grounds against the Court.

The Catholics.

The Spanish marriage never took place, and Prince Charles eventually married Henrietta of France, the King giving a secret promise to tolerate the Catholic faith, after having, together with his son, taken a public oath to the contrary. The last parliament of the reign met at Westminster on February 12th, 1624. James delivered a long speech, in the course of which he remarked to the Commons, touching their privileges, liberties and customs: "I am your own kindly King." The first Stuart sovereign was the finest burlesque actor ever seen on the royal stage. After stating with amazing assurance that he would rather maintain the liberties of the Commons than alter them in anything, he adjured

James's last Parliament.

them, "Let not any stir you up to law questions, debates, quirks, tricks and jerks, but continue yourselves in that honest modesty, whereby you may have my prayers to God for you, and procure the love of me, and a happy end to this Parliament."

Session of 1624.

The House of Commons voted £300,000 for the war against Spain, but to ensure the proper expenditure of the money, the Subsidy Bill contained a clause whereby the treasurers were to be nominated by Parliament. The Lords revised their privileges in this session, and the Lower House passed laws abolishing monopolies for the sale of merchandise. The Commons likewise reasserted their right to examine the public accounts and to appropriate the supplies; and they further expressed their dissatisfaction with the Royal proclamations against the extension of building in London, which proclamations were both illegal and subversive of private rights. A question having arisen as to the legality of the election for Blechingly, Dr. Harrys, Vicar of the town, was brought to the bar, and, kneeling, was charged by Mr. Speaker with indiscreet carriage about the election, and with venting his spleen in the pulpit. It was resolved, "He shall come in as a delinquent, upon his knees, and confess his fault; and upon Sunday se'nnight in the pulpit in his own parish church, shall also confess his fault, and that he is sorry for it and desires the love of his neighbours, and that he will avoid the like offence hereafter. He is advised to bear no spleen upon this to his neighbours, and to forbear to question them upon tythes." Dr. Harrys confessed his fault, and religiously carried out the injunctions. His case stands out as a singular example of clerical interference at elections.

A Vicar at the Bar.

Impeachment of Middlesex.

But the most important business of James's closing Parliament was the impeachment of the Earl of Middlesex, Lord Treasurer of England, for bribery and other misdemeanours. The prosecution owed its origin to the Prince of Wales and the Duke of Buckingham, who were inimical to Middlesex. This great officer of State was unanimously convicted by his peers, and, in addition to

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being sentenced to fine and imprisonment, he was excluded for ever from Parliament, and ordered never to come within verge of the Court. Constitutional authorities differ on the question of Middlesex's impeachment. Clarendon condemns it apparently because it was a sacrifice to Buckingham's resentment; but Hallam approves the act, because it restored for ever the salutary constitutional right of the Commons to proceed against the officers of the crown. The King prorogued Parliament on May 29th, 1624, and also on three subsequent occasions, the last being until April 20th, 1625, but on March 27th of that year the King died at Theobald's, in Hertfordshire.

Parliament during James's reign.

During the reign of James I., the people made considerable advances towards a fuller freedom. Parliament also extended its rights. In a struggle extending over twenty years, the Commons obtained a declaratory act against monopolies; recovered their ancient rights of impeachment and the appropriation of the supplies; asserted their claim to discuss all matters affecting Church and State; secured the exclusive privilege of determining contested elections; and remonstrated with effect against Royal proclamations binding the people, and the levying of customs at the outports. Some historians have claimed that James had many of the qualities befitting a ruler in such difficult times, and that he was honestly desirous of increasing the prosperity of his subjects; but in matters pertaining to Parliament

The King's defects.

James was a most arbitrary monarch, and he was in ceaseless conflict with that House which is the acknowledged representative of the people. By his admirers he was regarded as the "British Solomon," and the Duc de Sully designated him "The Wisest Fool in Europe." Like all the subsequent kings of his race, he had neither appreciation of, nor respect for, the law of the land. The Stuarts were capable only of one idea, that of their sovereign and Divine right. To this they sacrificed everything, with disastrous results to the dynasty.

CHAPTER II.

EARLY YEARS OF CHARLES I.

Character of Charles.

If Parliament had built any hopes upon finding in Charles a more reasonable monarch than his predecessor, these hopes were doomed to be speedily and ruthlessly disappointed. The new king was in many respects a welcome contrast to his father: he was not a buffoon, but possessed a grave and serious deportment; he was neither intemperate nor licentious; and if to the letter of religion he had added the virtue of truthfulness, in personal character he would have been almost all that could be desired. But as a Sovereign he was arbitrary and unsympathetic, and continued vigorously the invasion of the people's rights begun by James. Coming to the throne with a strong bias against the popular party, he sought out no wise statesman, with whom he might take counsel, but relied wholly upon his favourite Buckingham, a vain and foolish guide, who hardened his master against the people, and confirmed him in the maxims and the practice of absolute monarchy. Charles's marriage also was inauspicious. Henrietta Maria of France had no sympathy with the English race, and the union, which involved great concessions to the Catholics, soon proved of evil omen to the social and political welfare of both king and kingdom.

An age of transition.

The age was one of transition. New ideas were at work, and political enlightenment was advancing. A prescient monarch would have endeavoured to guide

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wisely the rising tide of popular thought and action, making himself thereby the favourite of the nation; but Charles was from the first bitterly opposed to the rights of the people, and being a slave to the Stuart doctrine of prerogative, he soon revealed himself a master in the arts of dissimulation and kingcraft. His first Parliament met for the dispatch of business on June 18th, 1625. The Commons were very niggardly in voting supplies for the Spanish war, and they have been blamed accordingly; but it must be remembered that they were resolved on abolishing the abuses of prerogative; and while the King had many artifices which he could employ against them, the withholding of supply was the only powerful engine they could use against him. With grievances unredressed, they were not likely to be very liberal; so they took the bold step of granting tunnage and poundage only for a year, instead of for the King's life, according to the precedent of two centuries. They would also grant no more than about £140,000 in subsidies; yet if advances had been made to them by the Crown they would have increased this amount, and they were actually engaged in debating the question, when Charles suddenly dissolved Parliament.

Parliament of 1625.

Boldness of the Commons.

Such a step was impolitic, and when a second House of Commons was summoned in February 1626, the King found that he had not got rid of his difficulties. They were indeed aggravated, and the Commons manifested a bolder spirit than before. They asserted their right to question the Duke of Buckingham, but the King sent a haughty message to the effect that he should not allow any of his servants to be questioned among them, much less such as were of eminent place and near unto him. He also claimed to do what he liked in the matter of calling or dissolving Parliaments, and according as he found the fruits of them good or evil, they were to continue to be or not to be. This arrogant language, which had not been paralleled even in the reign of the Tudors, greatly incensed the Commons, and they forthwith proceeded to the impeachment of Buckingham. The Duke's in-

competence had been manifested by, amongst other acts, the failure of the fleet dispatched to Cadiz to seize Spanish treasure. Early in February, the Commons drew Buckingham's impeachment into formal shape. A body of managers, including Sir John Eliot, John Pym, and Sir Dudley Digges, undertook the conduct of the affair.

Sir John Eliot.

As two out of the three distinguished commoners just mentioned now come into prominence, we pause for a moment over their names. That illustrious patriot, Sir John Eliot, came of an old Cornish family, and was born in 1570. Educated at Exeter College, Oxford, he studied law in London, and in 1614 entered Parliament as member for St. Germans. He quickly rose into prominence as an orator and debater, and in the course of a few years he was recognised as one of the foremost champions of liberty. In Charles's first Parliament he warmly supported the execution of the laws against the Papist recusants ; and in the succeeding Parliament he became the leader of the constitutional party. From this time forward he stood forth as one of the noblest and most unselfish patriots of the age.

John Pym.

John Pym, another of England's famous patriots, was descended from a good Somersetshire family. He was educated at Broadgates Hall, Oxford, entered the public service in the Exchequer Office, and in 1614 was returned to Parliament as member for Colne. His history, from the time when he became one of the managers of Buckingham's impeachment, will be interwoven with our narrative. Pym was one of the staunchest advocates of popular rights ; indeed so great was his influence that the Royalists gave him the nickname of King Pym. He was a fine debater and an admirable tactician, and Clarendon passed this eulogy upon him : "He seemed to all men to have the greatest influence upon the House of Commons of any man ; and in truth, I think he was at that time (1640), and for some months after, the most popular man, and the most able to do hurt, that had lived at any time."

Sir Dudley Digges.

Sir Dudley Digges, who was temporarily only arrayed against the Court

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party, made his peace with Charles, after supporting Buckingham's impeachment and advocating the Petition of Right. He disappears from the ranks of the patriots in 1630. Six years later he received the Mastership of the Rolls, and held that office until his death in 1639.

Impeachment of Buckingham.

The managers of Buckingham's impeachment having completed their indictment, Charles's favourite was charged at the bar of the House of Lords with various distinct acts of corruption and bribery. Although no evidence was taken in support of the articles, the managers demanded Buckingham's commitment to the Tower. The charges were no doubt true, however, and in making them, Digges described the Duke as "a prodigious comet," while Eliot compared him to the infamous Sejanus. But instead of committing his minister to the Tower as requested, the King sent thither Eliot and Digges. This outrage greatly disturbed the Commons, and the Lords having cleared the imprisoned members by protestation, the Lower House resolved "not to do any more business until they are righted in their privileges." The Judges gave their opinion that the restraint of Eliot and Digges "was an arrest of the whole body, no reason being given to the House for it, and that a breach of privilege must follow." Much against his will, Charles was obliged to release the members, and to admit that he had erred.

Arrest of Eliot and Digges.

The Earl of Arundel.

At the same time, the King trampled upon the privileges of the peers. The Earl of Arundel was committed to the Tower on no ground apparently save that his son had married a lady of royal blood. The Lords took up the case; and after examining precedents, resolved that "no lord of Parliament, the Parliament sitting, or within the usual times of privilege of Parliament, is to be imprisoned or restrained without sentence or order of the House, unless it be for treason or felony, or for refusing to give surety for the peace." Charles was obliged to yield to the privileges of the Lords, and to set Arundel at liberty. Another infringement of the rights of the peerage which created much ill-feeling, was the refusal of a writ of summons to the Earl of Bristol. Holding

his dignity by patent, Bristol was unquestionably entitled of right to attend Parliament; and the Lords would have been guilty of dereliction towards their own body if they had not insisted upon the summons. The King ultimately sent the Earl his summons, but enjoined him not to take his seat. Bristol made known the facts to the House; but, to prevent any further interference on his behalf, the King committed him to the Tower on a charge of high treason. This was a counter-charge to those which Bristol had made against Buckingham. Charles's conduct in the Arundel and Bristol cases affords a further revelation of his obstinacy, and of his blindness to the dangers attending an unconstitutional rule.

Lord Bristol's case.

To cut the Gordian knot of his difficulties, and at the same time to save Buckingham, the King dissolved Parliament. Although the Lords even expressly interceded for a longer sitting, they were answered, "No, not a minute." The Houses were dismissed, and when a remonstrance was prepared by the Commons in vindication of their proceedings, a proclamation was issued for burning the remonstrance. Charles now resorted to illegal means to replenish the royal purse. The Commons had declined to pass a bill granting the five promised subsidies until their complaints had been satisfied, and as the sovereign was left without any regular supply, he determined upon a general loan. By the terms of this demand, which differed little from the old benevolences, a certain sum, to be repaid in eighteen months, was required from all, down to the poorest tradesman. The names of those who refused to comply were to be communicated to the Privy Council. The Government also attempted to persuade the people to pay the unsanctioned subsidies, but the judges who sat in Westminster Hall were answered by a great cry that no subsidies would be paid without a Parliament. Failing in this, the Court now pushed forward a forced loan. This tyrannical act was resisted, but the poorer recalcitrants were impressed into the navy, and many of the richer were committed to prison.

The Houses dismissed.

A loan demanded.

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Early Years of Charles I.

Wentworth.

Among the latter were Sir Thomas Wentworth, afterwards Earl of Strafford, and a Buckinghamshire gentleman, John Hampden, whose name will always thrill the blood of Englishmen. Thomas Wentworth, who was the son of Sir William Wentworth, was born in 1593. He was educated at St. John's College, Cambridge, and represented Yorkshire in Parliament from 1613 to 1628, with the exception of the assembly of 1626. While assuming an independent position, his early sympathies were more with the people than with the Crown. He opposed James's encroachments upon parliamentary privileges, and now resisted the forced loan levied by Charles. It will be hereafter seen how he gradually went over to the Court, and how his headstrong and imperious policy precipitated both his own downfall and that of his ill-fated sovereign.

Hampden.

John Hampden, born in 1594, was the son of John Hampden, of Great Hampden, Bucks, and Elizabeth Cromwell, aunt of Oliver Cromwell. He was educated at Thame School, and at Magdalen College, Oxford, and entered the Inner Temple in 1613. He was returned to Parliament for Grampound in 1620, for Wendover in 1626, and for Bucks in 1640. His career, unlike that of Wentworth, was a steady and consistent vindication of the popular cause, and he came to occupy a unique position in the love and esteem of his fellow-countrymen. His soul loathed tyranny, and he was wise and able beyond almost all his contemporaries. The purity, strength, and simplicity of his character gave him great power with the people.

Principle of Habeas Corpus.

Five gentlemen, Darnel, Corbit, Earl, Heveningham, and Hampden, having been imprisoned for refusing to contribute to the loan, sued the Court of King's Bench for their writ of *habeas corpus*. Though the writ was granted, the Warden of the Fleet detained his prisoners, by a warrant of the Privy Council, which stated that they were committed by the special command of his Majesty. Now arose a great constitutional question, which was argued with signal ability in the law courts. Could

a prisoner be detained by special command of the King, signified by a warrant of the Privy Council, without showing cause of imprisonment? This was made a test question in Darnel's case. The prisoners demanded their liberty, on the original basis of *Magna Carta*; but the judges, relying upon an obscure declaration of their predecessors in the 34th of Elizabeth, decided for the Crown. If such a decision had been allowed to stand good, then the boasted privileges of *Magna Carta* were liable to be swept away, by a few words of sovereign authority inserted in a warrant. The Commons withstood the decision, however, and it led, first to the Petition of Right, and ultimately to the passing of the *Habeas Corpus* Act.

Parliament of 1628.

After violating the public liberties in an unexampled manner, Charles was driven by the necessities of the French war to call another parliament, which met on March 17th, 1628. A number of gentlemen who had been imprisoned were released, and many of these were returned to the new parliament. Using a phrase which has since been employed under a variety of circumstances, serious and ludicrous, Sir Benjamin Rudyard said in the commons, "*The eyes of Christendom are upon us.* The King and kingdom will be valued and dis-valued, both by enemies and friends, according to the success of this parliament. Our lives, fortunes, and religion depend upon the dissolution of this assembly, wherefore we had need to be wise." This language proved to be no whit exaggerated. The Lower House immediately set to work, vindicating the rights of the subject, rather than continuing its contest with Buckingham. Resolutions were passed against arbitrary imprisonment, unparliamentary taxation, and other grievances. Sir Edward Coke, who espoused the popular side, proposed that the Commons should ask the Lords to join with them in a Petition of Right, specifying the grievances complained of. This was agreed to, and after a long debate on May 28th, the Upper House passed the petition.

Charles returned an answer, which the Commons did

CHAP. II. Early Years of Charles I.

not deem sufficiently explicit. Accordingly, with the support of the Upper House, they asked for a definite answer to their declaration of abuses. Unable any longer to fence, the King consented to the bill in the usual form.

The Petition of Right.

The Petition of Right is one of the greatest statutory vindications of the public liberties. It was not drawn and passed in the ordinary forms of an Act of Parliament, but as a declaratory statute. After reciting various laws, which had secured certain essential privileges of the subject, and naming the violations of these laws which had recently occurred, the Petition proceeded to pray the King as follows: "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge without common consent by Act of Parliament; that none be called to answer or take such oath, or to give attendance, or be confined or otherwise molested or disquieted concerning the same or for refusal thereof; that no freeman in any such manner as is before mentioned be imprisoned or detained; that your Majesty would be pleased to remove the said soldiers and marines, and that your people may not be so burthened in time to come; that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land." The Parliament which wrung this important document from Charles did a great work. When it had been suggested to him at the council table before the summoning of the Houses that he should call a parliament, the King said that he did abominate the name. But posterity is indebted to the Eliots, the Pyms, and the Cokes, for making the Parliament of 1628 something more even than a name, by devising a check upon a sovereign who was manifestly determined to set at naught the ancient statutes of England.

Tunnage and Poundage.

Having obtained from the King a declaration of rights,

which is regarded as second only in importance to *Magna Carta*, the Commons proceeded to vote liberal subsidies, amounting to about £350,000. But the breaches between Charles and the Commons were by no means healed. The question of tunnage and poundage gave rise to much ill-feeling. The King had exacted this charge without the consent of Parliament, and the Lower House was determined to place the grant upon its true constitutional basis. A bill was consequently prepared granting tunnage and poundage, but it was delayed in its passage, in order that the Commons might remonstrate with Charles, against his illegal anticipation of their consent. A committee was appointed to draw up a representation to his Majesty of the people's rights. As the receiving of tunnage and poundage, and other impositions not granted by Parliament, was declared to be a breach of the fundamental liberties of the kingdom, and contrary to the Petition of Right, his Majesty was besought to forbear any further receiving of the same and not to take it in ill part from those of his loving subjects who might refuse to pay the charges illegally demanded. Charles cut the matter of protestation very short. On June 26th, having signified his intention of coming to the House in the afternoon, he appeared there very unexpectedly in the morning. He had not on his Parliament robes, neither had the Lords on theirs. His Majesty addressed the House from the throne. "He came there to prevent any more remonstrances, which were preparing, and to which, as meaning to take away his profit of tunnage and poundage, the chief maintenance of the Crown, he might give a harsh answer." Parliament was prorogued to October 20th, and subsequently from that date to January 20th following.

Laud's religious policy.

In addition to the questions arising out of tunnage and poundage, a serious religious difficulty existed at this time. The established form of worship was being gravely tampered with by Laud, afterwards Archbishop of Canterbury. This prelate was destined to still further embroil the monarch with his subjects. William Laud,

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Early Years of Charles I.

one of the great but ill-omened figures of the reign, was born in 1573, being the son of a Reading clothier. Educated at Reading School, and St. John's College, Oxford, of which latter he was elected a fellow in 1593, he was ordained in 1600, and speedily became an active opponent of the Puritans at Oxford. In 1605 he caused wide scandal, by marrying the Earl of Devonshire to the divorced and guilty Lady Penelope Devereux; nevertheless, in 1611, he was elected President of St. John's, made one of the King's chaplains, and appointed successively Archdeacon of Huntingdon and Dean of Gloucester. In 1621 he was advanced to the Bishopric of St. David's, and about this time became the friend and spiritual adviser of Buckingham. Laud conducted a controversy with the Jesuit Fisher, on the questions at issue between the English and Roman Churches. From the period of Charles's accession his influence waxed still greater, and it was all used on behalf of Arminianism. In 1628 the Commons remonstrated against his influence, and adopted a resolution expressing their adherence to the articles of religion established under Elizabeth, and condemning the Arminians, "who still increase, and are the spawn of a Papist." Charles, however, promoted Laud to the Bishopric of London in 1628, and promised him the See of Canterbury, which he eventually attained in 1633.

John Selden.

A man of a wholly different type, but equally prominent at this period, was John Selden. Constitutionalism had in him one of its wisest and most learned advocates. Born in 1584, he was educated at Hart Hall, Oxford, and became a member of Clifford's Inn in 1602. So vast was his erudition, that not only at home but in foreign countries he was usually styled "the great dictator of learning of the English nation." Selden published in 1618 a *History of Tithes*, in which he based the claim of the clergy to tithes on the grant of the civil power. The Court of High Commission suppressed the book, and the author was compelled to make acknowledgment of his error. Selden was first returned

to Parliament in 1624, and in 1626 he took part in the impeachment of Buckingham, having the preparation of the fourth and fifth articles entrusted to him. He also assisted in drawing up the Petition of Right.

Session of 1629.

The second session of Charles's third parliament opened on January 20th, 1629. During the interim Buckingham had been assassinated by Felton, and Charles had thus lost his chief counsellor. The infatuated sovereign now took as his adviser Wentworth, who had forsaken the people for the Crown. This man of real, but saturnine genius, was created Viscount Wentworth, and made Lord President of the Council of the North. The House of Commons was still incensed with the King, and proceeded in its crusade against unlawful taxation. Fuel had been added to the flame by the proceedings against certain traders, including three merchants named Rolls, Chambers, and Vassal, who had refused to comply with the demands of the custom-house. Their goods had been distrained, and, on suing writs of replevin, they were told by the judges that the King's right had been established beyond dispute in the case of Bate. This case arose more than twenty years before. It appears that the Levant Company, which had been granted by Elizabeth a monopoly of the trade with Turkey and Venice, had allowed non-members to import currants, on payment of 5*s.* 6*d.* per cwt. After the Company was dissolved in 1603, the Government continued the imposition. In 1606, John Bate, a merchant, refused to pay it, and when the case was argued in the Exchequer, judgment was given for the Crown, on the ground that the royal power was double-ordinary, that is, unchangeable without authority of Parliament, and absolute, varying according to the King's wisdom. In consequence of this decision, Cecil issued the *Book of Rates* in 1608, imposing fresh duties on many articles; but from that time forward, the House of Commons fought against the illegality of these and the like imposts.

Illegal imposts.

Scene in the Commons.

The question of tunnage and poundage, aided by that of the Arminian innovations, led to the forcible

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dissolution of Parliament. On March 2nd, 1629, a strange scene took place in the Lower House. The Commons were embittered against Laud and his sympathisers, not only on religious but on political grounds, for the High Churchmen taught generally that resistance to rulers was, under all circumstances, a grievous sin. The great mass of the community supported parliament in its protests, alike against Charles's civil tyranny and the obnoxious Arminian doctrines. On the day above named, March 2nd, Sir John Eliot offered a remonstrance on tunnage and poundage, which the Speaker and Clerk both refused to read. He then read it himself. The Speaker (Sir John Finch) was next requested to put the question, but replied, "He is commanded otherwise by the King." Mr. Selden rose and said, "If you will not put the question, which we command you, we must sit still and shall never be able to do anything. We sit here by command from the King, under the Great Seal; and as for you, you are, by his Majesty, sitting in his royal chair before both Houses, appointed our Speaker; and do you now refuse to be a Speaker?" The Speaker answered, "He had an express command from the King to rise as soon as he had delivered his message." Thereupon he rose and left the chair, but was drawn to it again by several members. The Privy Councillors endeavoured to free him, but Mr. Holles declared, "He should sit still, till it pleased them to rise." The Speaker then said with tears, "I will not say I will not, but I dare not." Mr. Selden observed that he "ever loved his person well, yet could not choose but much blame him now—that he, being the servant of the House, should refuse their command under any colour; and that his obstinacy would be a precedent to posterity, if it should go unpunished. For that, hereafter, if we should meet a dishonest Speaker (and we cannot promise ourselves to the contrary), he might, under pretence of the King's command, refuse to propose the business and intendment of the House; he therefore wished him to proceed." The

Speaker still refused, "with weeping and supplicatory orations."

Mr. Holles was then, amid great cheering, requested to read certain articles which condemned, as a capital enemy to the kingdom, any one who might introduce Popery or Arminianism, or aid in the exaction of tunnage and poundage. The King, who was in the House of Lords, hearing that the Commons still continued to sit, notwithstanding his command to adjourn, sent a messenger for the Serjeant, with the mace. The Serjeant was prevented from bearing away the mace, while the key of the door was taken from him, and given to a member to keep. The King then sent Black Rod to dissolve the Parliament, but amid great tumult the House refused to receive him. Upon this, the Captain of the band of pensioners was sent to force the door, but the rising of the House prevented further inconvenience and mischief. On March 10th, Charles went to the House of Lords, in his robes and crown. Divers members of the Commons were present, but their House was not called up, neither did the Speaker attend. The King spoke of "the undutiful and seditious carriage of the Lower House, that hath caused this dissolution." The Lord Keeper then dissolved the Parliament.

Charles and the Commons.

Charles issued a declaration touching the causes of the dissolution, and promised to maintain the laws and liberties of the people, as he interpreted them. In a proclamation, he also claimed to exercise full power as to calling, continuing, or dissolving Parliament; but he would "not overcharge his subjects by any more burthens, but satisfy himself with those duties that were received by his father, which he neither could nor would dispense with." Then, in Stuart fashion, he turned relentlessly upon his noblest foes. Eliot, Selden, Holles, Strode, and other distinguished Commoners were committed, some to the Tower and others to the King's Bench, and their papers seized. Moving for their *habeas corpus*, the accused were informed that they were detained under the King's order, for notable contempts, and for stirring up

High-handed action of the King.

Eliot, Selden, and others imprisoned.

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sedition. Eliot was proceeded against for words uttered in the House, and Holles, Selden, and Valentine for their participation in the tumult which arose on the last day of the session, when the Speaker was forcibly held down in his chair, while a remonstrance was voted. When the case came on for trial, the prisoners pleaded the privileges of parliament, and declined to put in any other plea. The judges, who had already, in the preliminary proceedings, shown a narrow and carping spirit, gave their decision, that the offenders should be imprisoned during the King's pleasure, and not released, without giving surety for good behaviour, and making submission; while fines were inflicted varying from £500 to £2000. These popular leaders declined to make their submission, and Eliot died in prison, while Selden was not released until 1633. The Long Parliament condemned the illegality of these proceedings, but it was not until 1667 that the House of Commons formally resolved, that the Act of 4 Henry VIII., which annulled the proceedings taken against one Strode, for a speech in Parliament, was a general law, "extending to indemnify all and every the members of both Houses of Parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters, in and concerning the Parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights of Parliament." It was further resolved, in this session of 1667, that the judgment given, 5 Charles I., against Sir John Eliot, Denzil Holles, and Benjamin Valentine, was an illegal judgment, and against the freedom and privilege of Parliament. The Lords concurred in these resolutions, and the judgments were solemnly reversed, thus establishing the right of free speech in Parliament.

Right of Free Speech in Parliament.

Government without Parliament.

No longer dreading the checks which might be imposed upon his action by the Commons, Charles now proceeded to govern without a Parliament. Customs on imported goods were illegally and rigorously enforced, though there were not wanting sturdy spirits like Richard Chambers, a merchant and a Puritan, who resisted the imposts, and

SHIP MONEY LEVY.

RETURN SHEWING JOHN HAMPDEN AND OTHERS OF THE PARISH OF LITTLE KIMBLE, BUCKS, AS DEFAULTERS.

Kimbl. Magna: Januarij the xiijth 1635

not returne our warrant & their names hereunto written for refusing to pay such portions of money as were to them assessed by the assessours for the raysing of the sume of xxxli xijs vd ob

Peter Aldridge
Thomas Lane } assessours

John Goodgild
Thomas Rutland } Constables

*John Hampden Esquire	xxxli vjs
Thomas Lee Esquire	xli, iiijs
Mr Nocstall	xxs xijd
Thomas East	xxxiijs iijd
Peter Aldridge	xxs iiijd
Richard Blastwell	xxijs xijd
Nordon Hampton	xs
The occupiers of Hernells grove Matthew Aldridge	xxiiijs iijd
Thomas Lane	xs xijd

suffered imprisonment and ruin in consequence. Extraordinary and unjust means were taken to raise the revenue. Those who had neglected to obey the royal proclamation summoning them to receive knighthood at the King's coronation were proceeded against, and it is said that the fines from this source alone reached £100,000. An effort was made to revive the King's ancient forest laws, and many great land-owners were almost ruined by the exactions. Monopolies were revived, and amongst the articles protected for a time were soap and starch, which brought large sums into the royal treasury.

Ship-money.

Ship-money also began to be exacted. It appears that Noy, the Attorney-General, had discovered that the seaports and maritime counties had, in early times, been called upon on certain occasions to furnish ships for the public service; and that there were even instances of similar demands upon some inland places. This was enough for Charles and his council. The first writ for ship-money was issued to the magistrates of London and the seaport towns in October, 1634, on the ground of the necessity for raising a fleet, to maintain the British sovereignty of the seas, to assert the ownership of the North Sea fisheries, to prevent the French from capturing Dunkirk, and to secure the co-operation of Spain for the restoration of the Palatinate. The Lord Mayor of London at first resisted the writ; but it was soon generally submitted to, and was followed by a second writ, addressed to the Midland towns and counties. Other writs followed, and ultimately ship-money, which originally was very rarely resorted to, became a general tax. Whereas the early writs only demanded the actual equipment of vessels, for which inland counties were obliged to compound, the latter directed the sheriffs to assess every landowner and other inhabitant, according to his supposed means, and to enforce the payment by distress.

Hampden's resistance.

Several persons resisted the tax, but the great test case was that of Hampden. The sum of £4500 was demanded from Buckinghamshire, and towards this sum Hampden was assessed at twenty shillings for his lands

CHAP. II. Early Years of Charles I.

in the parish of Stoke Mandeville. He refused to pay, and the case came on for argument in the Exchequer Chamber in November, 1637. There was a great display of legal learning, and Oliver St. John argued the case for Hampden, and for the principle of national freedom, relying upon the great Charter, upon the statutes of Edward III., upon the Petition of Right, and upon the fact that England was actually engaged in no war. The law officers of the Crown mainly relied upon the absolute authority of the King, evading, for the most part, the statutory arguments. It was not until June 1638 that Chief Justice Finch, who was really the originator of the idea for making ship-money a general tax, gave judgment for the Crown. Two judges decided in favour of Hampden on technical grounds, and three for him on all counts; but the remaining seven were against him. If there had been one more voice in his favour, the cause would have been lost for the King, so far as the technical grounds were concerned. The Court gained the day, but it was an expensive victory; while the name of Hampden, as the champion of the people, passed into all men's mouths.

Charles's exactions.

The long trial, and the division amongst the judges, operated against the tax, which was now paid with greater reluctance than ever. Charles had made peace with France and Spain, but even with a lessened expenditure he could not get enough money. In four principal ways did this Monarch oppress the people of England—namely, by monopolies, forest-extension, ship-money, and the issue of proclamations in restriction of trade and private enterprise.

The Star Chamber.

In the Star Chamber, he found a body willing to justify his exactions. The Court of Star Chamber had a wide jurisdiction in misdemeanours and civil causes. In the time of Henry VII., when, as we have seen, it took definite shape, its powers consisted in the regulation of the abuses of maintenance, etc.; but the institution went through many changes, until, in the time of James I. and Charles I., it had become the engine of the Crown against the people. During a considerable portion of the Tudor

period, the powers of the Court had been beneficially exercised; but in Elizabeth's time the Star Chamber began to exercise a most arbitrary influence, and to inflict those cruel and vindictive punishments which were continued with such severity under the Stuarts as to lead to its abolition. Although Charles and his government were not responsible for the illegal extension of the jurisdiction of the Star Chamber, its most infamous sentences were passed under their auspices. A Scotch divine, Alexander Leighton, father of the celebrated Archbishop, having published a pamphlet against Prelacy, was in 1630 sentenced to be publicly whipped at Westminster, and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron; to undergo a similar humiliation the following week at Cheapside, and to suffer perpetual imprisonment in the Fleet. This barbarous sentence was duly carried out. Lilburne was whipped, set in the pillory, and treated with great cruelty, for writing against the bishops; and the Puritan lawyer Prynne, a man of great erudition, was fined £5000, and was cropped, slit and branded, and thrown into prison for publishing a work entitled *Histriomastix*, in which he inveighed against the immorality of the stage. No wonder that the public conscience was shocked by these outrageous sentences, and a good deal of the popular wrath fell upon Laud, who was not only consenting to them, but lamented that these abominable severities were not more numerous and more cruel.

Leighton's case.

Lilburne.

Prynne.

Meanwhile, in the lay sphere, Lord Wentworth was carrying out his policy of *Thorough*, first in the northern counties of England, and afterwards in Ireland. Appointed Lord-Deputy of Ireland in 1631, he proceeded to set up a system of tyranny and repression for the island. With the exception of effecting a foundation for the linen trade, and securing certain administrative and Church reforms, Wentworth's government was harsh and revolting in character. While the Deputy suppressed petty tyrannies, he instituted a greater, and forcibly pacified

Wentworth's policy.

CHAP. II. Early Years of Charles I.

Ireland for a time by a series of exactions, and the negation of individual and national liberty.

Religious tyranny.

On the death of Abbot, in 1633, Laud was translated to the Archbishopric of Canterbury. The same year, he had gone with Charles to Scotland, setting up in Holyrood Chapel a form of worship most repugnant to the Scottish people. In England also he encouraged the King in his hatred of the Puritans, and in the year of his advancement, Charles re-issued his father's declaration, known as the Book of Sports, and enforced the reading of it in all churches. This step was bitterly resented by the Puritans, and, as the result of Laud's persecuting religious policy generally, many of them emigrated to America. Cromwell and others were preparing to embark when an order of council prevented them. Next came an attempt to impose a Liturgy, prepared by Charles and Laud, upon the churches of Scotland. When it was essayed to introduce the new service at St. Giles's Church, Edinburgh, Jenny Geddes threw her stool at the head of the officiating Dean. Presbyterian Scotland rejected Laud's Liturgy, and there was formulated the solemn National Covenant, which bound the people together in one solid phalanx. Charles took up arms against the Covenanters, who were already on the defensive, but in 1639 the peace of Berwick was concluded. This was a hollow pacification; the Scots soon had reason to distrust the King; so they declined to lay down their arms, and practically threw off their allegiance.

The King's difficulties.

Charles was now in serious difficulties. He had favoured the Papists, who hoped to see their religion make great progress, yet he could not get his ship-money, and found it futile to rely again upon Catholic subscriptions. The Scots were, as one man, enthusiastically and resolutely banded against him, while the English Puritans were equally disaffected. Under these circumstances, and the raising of money having become a necessity, he summoned Wentworth from Ireland, in order to take counsel with him. Here we come, with both monarch and statesman, to the parting of the ways.

CHAPTER III.

KING AND PARLIAMENT, 1640-49.

Attitude of the country.

ENGLAND had so long been governed by King and Council, that there were those who doubted whether a parliament would ever be summoned again to Westminster. The country had enjoyed a large measure of internal prosperity, but oppression had been so rife, and so many illegal acts had been committed, that the heart of the nation no longer beat with the old hope and pride. Yet there were still sturdy, inflexible men, patriots of an immovable virtue, who were watching the course of events with a stern determination to resist tyranny, if needs be, to the death.

The Scots.

A correspondence having been discovered between the Scots and the French Court, Charles was full of hope that his English subjects, if appealed to, would declare against the "Scottish treason." Wentworth counselled him to pursue a vigorous war against the northern rebels. The King fell in with these counsels, and by way of showing his full confidence in Wentworth, created him Earl of Strafford, and advanced him from the post of Lord-Deputy to that of Lord-Lieutenant. Then he decided to call a parliament, his friends telling him that if he should fail, after making trial once more of the ancient and ordinary way, the people would be left without excuse. Accordingly, what is known as the Short Parliament met

The Short Parliament.

CHAP. III.

King and Parliament, 1640-49.

on April 13th, 1640, and all accounts concur in stating that it was full of sober and dispassionate men—men who were "as favourably disposed towards the King's service, and as little influenced by their many wrongs, as any man of ordinary judgment could expect." Before the Houses met, Strafford had been over to Ireland, had wrung four subsidies from the Irish Commons, and equipped a force of eight thousand men, to aid in subduing the Scots. He sanguinely hoped to pursue the same policy at Westminster, but the English commoners sympathised with the Scottish people, and would do nothing at all until their own grievances had been redressed. Pym, Waller, Lord Digby, and other leaders spoke strongly against the numerous abuses in Church and State, and a committee was appointed to confer with the Lords on ecclesiastical innovations, fiscal infringements, and breaches of parliamentary privilege. When requested by the peers to begin with supply, and relegate grievances to a secondary place, they voted this interference as in itself a high breach of privilege. Charles asked for twelve subsidies, payable in three years, and offered to release his claim to ship-money; but the Commons rejected his proposition, holding ship-money to be a crime, and the judgment against Hampden an infamy, which they could in no wise countenance by a compromise. Nothing could be done, until their own right of taxation had been restored inviolate.

Its dissolution.

Determined to abate nothing of his royal prerogative, the King dissolved the Parliament after a session of three weeks. "Things must go worse before they go better," exclaimed St. John, and this was speedily the case with some of the popular leaders, who were thrown into prison and their houses searched for papers. The country was exasperated by the dissolution, and everywhere, except at Court, a feeling prevailed that grave events were impending. But Charles, buoyed up by Strafford, indulged the hope of gaining a signal victory over the Scots. To carry on his military operations, he stringently enforced ship-money, and laid a new imposition, for

military equipments, upon the counties. In spite of Strafford's threats against the civic authorities of London, and the extortion of money at the sword's point, a very small sum only could be raised for the King's necessities. At the same time the Scots, under Lesley, invaded England. Charles hurried to the north, and at his summons a great council of peers assembled at York, on September 24th. The King hoped to do without the Commons, and looked to the Lords to assist him. They patriotically declined, and the council, which Clarendon described as a "new invention," because it had not been resorted to for hundreds of years, proved abortive. The King was petitioned by the citizens of London, and by a document signed by twelve popular peers, to summon a parliament, and he was at length fain to assent. The difficulty with the victorious Scots was temporarily adjusted by the humiliating pacification of Ripon.

Council at York.

With feelings of profound solicitude, Charles looked forward to the proceedings of his fifth parliament, which met at Westminster on Nov. 3rd, 1640. It was said of this great historic assembly, which is known as the Long Parliament, that "many thought it would never have a beginning, and afterwards that it would never have an end." Its proceedings lasted through twenty years, though it was in the meantime dissolved by Cromwell in 1653. The total number of members at the opening was 504, and not 493, as is sometimes stated. More than half the House, or 294 members, had sat in the previous Short Parliament. Mr. William Lenthall was elected Speaker. The House of Lords at this time consisted of 150 members. The King addressed the Commons in an unusually conciliatory speech, but the Stuart tyranny had gone too far, and the Lower House was absolutely bent upon redress. Neither can the men who came to this Parliament with such a resolve be blamed, for it depended upon them whether people and Parliament should recover their ancient liberties, or become the mere vassals of the Sovereign. It is from this Parliament that the spirit of party dates, and if it

The Long Parliament summoned.

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committed undoubted errors, and sank at last into decrepitude, after subverting the Constitution it had at first strengthened, it yet "effected more for our liberties than any that had gone before or that has followed." In the outset it was a noble assembly—a Parliament of action, of enthusiasm, and of patriotism.

Removal of grievances.

The Commons speedily began their remedial work of removing grievances and "pulling up the causes of them by the roots." The Triennial Bill, passed Feb. 10th, 1641, provided that the interval between parliaments should never exceed three years. If a parliament were not summoned and assembled before September 3rd, in every third year, then one should be held on the second Monday in the November following; the Chancellor or Keeper of the Great Seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under severe penalties; in case of his failure, the peers were empowered to issue writs to the sheriffs; in the event of the failure of the peers, the sheriffs were to cause elections to be duly made; and, in their default, the people were to proceed to elect their own representatives; while no future parliament was to be adjourned or dissolved in less than fifty days after the time appointed for its meeting. The nation hailed with acclamation this salutary check upon the royal power of dissolution. Ship-money was next attacked, and declared illegal; and the judgment against Hampden was annulled. Tunnage and poundage, and the levy of taxes, were made impossible without the consent of Parliament. Last but not least of these general reforms, the Star Chamber, the High Commission, and other special courts having an unconstitutional jurisdiction, were abolished. The courts of the North and of Wales were shorn of their arbitrary powers; the abuses of the Stannary courts were rectified; purveyance was regulated; the right of the Commons to appropriate the supplies was reasserted; compulsory knighthood was abolished; the delimitation of the forests was provided for; and the usage of pressing soldiers for service was forbidden

The Star Chamber abolished.

except in case of sudden invasion, or as concerned those who were otherwise bound by the tenure of their lands or possessions. The King was unable to resist the passing of these important and salutary statutes.

Impeachment of Strafford.

Collaterally with this legislative work, the House of Commons undertook the impeachment of Strafford; an act for which they have been blamed by some, but which was unavoidable on their part, as guardians of the public interests. If ever an impeachment for acts committed to the prejudice of the commonweal was justified, this was one. Strafford's Irish rule, his abuses in the north, his constructive treason against the liberties of the people, and his malevolent ascendency in the King's councils, all warranted the exercise of their constitutional right of impeachment by the Commons of England. Charles assured his Minister that not a hair of his head should be injured by Parliament, but Strafford had scarcely taken his seat in the Upper House before Pym appeared at the bar impeaching him of high treason. Finding, however, that the process of impeachment was both slow and attended by difficulties, Pym suggested that the Commons should abandon this method, and proceed by way of a bill of attainder. This was a vigorous step, but in its very boldness lay its efficacy and safety. The great Parliamentary leader saw that anything short of this would have been fatal to justice, and would have allowed the offender to escape. The impeachment of Strafford not only caused the overthrow of the Minister, but was a decisive blow at the tyranny of his master. When Strafford handed his sword to Black Rod, and was conveyed to the Tower amid cries of "Treason," the Commons had already virtually gained the victory. The excesses of Strafford's government in Ireland were chiefly relied upon in the articles. He had arrogated to himself more than kingly power. There were, and still are, those who thought the charges scarcely amounted to high treason, but the exact definition of this in all cases is a matter of great difficulty, and it is very significant that, when the House of Lords referred the question of the sufficiency of

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the charges to the judges, the latter unanimously responded, that upon all which their lordships had voted to be proven, it was their opinion that the Earl of Strafford did deserve to undergo the pains and penalties of high treason by law. The Lords accepted as substantive treason the fifteenth article, which charged Strafford with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions. This was levying war, and the best authorities regard it as constituting treason within the Statute of Edward III. There were also further serious counts, cumulative in character, and giving force to the charge of treason. Strafford laboured hard to prove that all the evil he had done did not amount to treason, but revelations made concerning his plot to bring over the Irish army to crush the liberties of England, combined with the intense popular feeling against him, cut off all hope. The great bulk of the House of Commons, both as regards numbers and intellect, was against Strafford, and only one or two eminent men, including Selden, appeared in the minority of fifty-nine who voted against the bill of attainder. Falkland, who spoke for the bill, probably also voted for it in the majority of 204. The names of the fifty-nine members who voted against the bill were published, causing great excitement, and they became known, and were posted, as "Straffordians." The Lords passed the bill of attainder by the small majority of 26 against 19 votes. Charles was reluctantly compelled to sign the death-warrant of the Minister he had promised to save. Strafford was consequently executed May 12th, 1641.

His execution justified.

Though Strafford's offences were of a manifestly heinous nature, much has been written to prove that he was not guilty of treason, according to the strict letter of the statute. But while constitutional writers regard the precedent of his execution as dangerous, they cannot look upon the bill of attainder as unjustifiable. The times were critical; a summary lesson against tyranny was absolutely necessary; and Strafford justly fell for his

crimes against the Commonwealth. Yet even while exacting righteous judgment, the Commons passed a bill to relieve Strafford's children from the penalties of forfeiture and corruption of blood; thus showing a magnanimity which we search for in vain in other records of Crown impeachments for treason.

The Commons in Committee.

Strafford's Attainder Bill was the first measure, other than a money bill, which the Commons considered, line by line, in a Committee of the whole House. A Committee of the whole House consists simply of the entire House of Commons over again, but with this distinction, that the Chairman of Ways and Means presides over the deliberations instead of the Speaker. The Commons elected themselves into a Committee, so that they might exclude the Speaker, who was frequently the spy and creature of the King; and while they deliberated in Committee, they could lock the doors and compel the Speaker to wait outside until sent for. That terrible power of calling upon a member by name, as a last resort, originated at this time, when, on June 9th, 1641, Speaker Lenthall, who had tried in vain to silence "divers members who were talking at the lower end of the House, in the west corner under the gallery, at last called upon Sir W. Carnabie, by name, to desist." It was the same Speaker, Lenthall, who, alluding on one occasion to the difficulty of constituting a House, censured "the conduct of members so unworthy to sit in Parliament, that could so run forth for their dinners, or to the playhouses and bowling alleys, leaving business of great weight." It was therefore resolved, on January 5th, 1640, "that Mr. Speaker is not to go to his chair till there be at least forty in the House." This rule has been in vogue ever since, but it was not until the session of 1729, that the consequent power of "counting out the House" was first exercised, in consequence of there not being forty members present.

Naming a member.

Making a House.

Parliamentary manners.

Abuses of good breeding and decorum in the House of Commons have formed a frequent subject of comment, but the right of staring fiercely in an opponent's face

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appears to have been established in 1642. Mr. Jesson, "who very worthily represented" Coventry, started up excitedly during a debate, to oppose a bill which endangered the trade of his constituents. "Whereupon Sir H. Mildmay took exception, affirming that the said Mr. Jesson had looked very fiercely upon him when he spoke, and that it was done in an unparliamentary way"; but Mr. Jesson was not let or hindered in his effective if ungentlemanly procedure. The Speaker himself was not always treated with that courtesy and consideration which were due to his position. We have seen how, on one occasion, members forcibly held him down in his chair, to compel him to put a resolution—though here, as being the mouthpiece of the House, he was obviously to blame. But there were other cases of an amusing character in which the Speaker was treated with great lack of dignity. For instance, in the Journals for 1610 we read: "Affirmed by Mr. Speaker, that Sir E. Herbert put not off his hat to him, but put out his tongue, and popped his mouth with his finger, in scorn"; while at a later date appears an entry to the effect "that Mr. T. T——, in a loud and violent manner, and, contrary to the usage of Parliament, standing near the Speaker's chair, cried "Baw!" in the Speaker's ear, to the great terror and affrightment of the Speaker and of the members of the House."[1]

Indignities to the Speaker

The Power of Dissolution.

From this digression, we return to the sittings of

[1] The Long Parliament could sometimes be very summary and intolerant in its action. For example, there was a tailor so imprudent as to curse the Parliament, whereupon the House of Lords sent him to labour in Bridewell for life. On another occasion a member of the Lower House, Sir William Earle, gave information of some dangerous words that had been spoken, and the Commons, who were greatly moved, passed this resolution—"That Mr. Speaker should issue his warrant to apprehend such persons as Sir William Earle shall point out." The Parliament was very sensitive as to its rights, if indeed it did not go beyond them. It "usurped from the first," as Hallam says, "legislative, executive, and judicial functions."

the Long Parliament. Alarmed, apparently, lest the power of Parliament should again be jeopardised by untoward events, the Commons passed a bill enacting that they should not be dissolved without their own consent. Charles gave his assent to the measure, though it was undoubtedly one contrary to the constitution. The Parliamentary leaders, however, based their action on a well-founded apprehension of the King's intention to dissolve the Parliament and to proceed against its leading spirits. Charles's plans to win over the popular leaders had all failed. The death of the Earl of Bedford prevented the completion of a projected government by that nobleman, which should include Holles as Secretary of State and Pym as Chancellor of the Exchequer.

Action against the Episcopacy.

Charles was also now greatly discomposed by the growth and vigorous action of the Puritans as developed in the ecclesiastical legislation of the Commons. It was the religious difficulty which ultimately precipitated the Civil War. One party in the Lower House desired to abolish the bishops, while the other declared in favour of a "moderate" episcopacy with limited powers; neither would give way, or endeavour to secure a pacification on the principle of toleration. There was soon a wide line of demarcation; and men like Hyde and Falkland, who were deeply attached to the Church and fearful for its safety, went over to the King, and formed themselves into a constitutional Royalist party. On May 27th, 1641, Sir Edward Dering brought in a bill for the complete extinction of episcopacy. This is known as the "Root and Branch Bill," and it had its origin thus: a petition praying that episcopacy might be destroyed, "root and branch," having been signed by fifteen thousand citizens of London, Alderman Pennington presented it to the House, December 11th, 1640. The phrase, root and branch, soon became a common expression, and amongst those who announced their adhesion to the principle were Hampden, Cromwell, young Sir H. Vane, and Nathaniel Fiennes; but neither Holles nor Pym favoured it. St. John drew up the bill. It proposed to appoint in each

Root and Branch Bill.

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diocese a number of commissioners, half lay, half clerical, to exercise ecclesiastical jurisdiction in place of the bishops. The bill passed its second reading by 135 to 108 votes, but it never got out of committee, and was dropped in August 1641. A bill for removing the bishops from the House of Lords was next introduced in the Commons and passed, but it was thrown out by the Peers. A second bill of a like nature, however, was sent to the Upper House at the close of October 1641, and it was ultimately carried. Twelve bishops, who had protested that Parliament was not free, in consequence of the mobs which flocked to Westminster, were suspended from sitting and committed to custody. The Commons' war against Prelacy was defended on several grounds,—the arrogant bearing of the bishops, the Papistical tendencies of Laud and his party, and the attempts made by the bishops in Convocation to bring the clergy into subjection. Laud himself was already in prison. He had been impeached December 18th, 1640, and, after the articles against him had been unanimously passed by the Commons, incarcerated in the Tower, February 24th, 1641. Lord Keeper Finch, and Secretary Windebank, who were likewise associated in the popular mind with the King's tyrannical policy, had escaped to the Continent.

Rebellion in Ireland.

Charles went to Scotland in the autumn, and the two Houses of Parliament agreed to a recess from September 8th to October 20th. Two days after the latter date, a terrible rising began in Ireland, which was only finally subdued by Cromwell in 1649-50.

The Grand Remonstrance.

Meantime, Parliament vigorously continued its work. Distrustful of the King, it prepared the "Grand Remonstrance," which had been proposed by Lord Digby some months before, with the object of putting before the Sovereign "a faithful and lively representation of the state of the kingdom." The real substance of the remonstrance, however, was "an appeal to the nation rather than an address to the Crown." The case of the Commons against the King was stated, and then followed an account of the condition in which they had found

the nation, what reforms they had already effected, what they proposed for the future, and what difficulties they had to contend against. The preamble cited the causes which made the Remonstrance necessary. The celebrated protest contained no fewer than 206 clauses, of which clauses 1 to 104 recapitulated the instances of the King's misgovernment, from his accession to the meeting of the Long Parliament; clauses 105 to 142 described the abuses abolished, and reforms effected and prepared by Parliament; clauses 143 to 180 enumerated the obstructions to the work of reformation, evil counsellors and slanderers, the army plots, and the Irish rebellion; clauses 181 to 191 explained and defended the scheme of the Parliamentary leaders, for the reform of the Church; while clauses 192 to 206 pointed out the remedial measures which the Commons demanded—viz., the establishment of certain safeguards against the Roman Catholic religion, adequate securities for the better administration of justice, and the choice by the King of such ministers and agents as the Parliament "might have cause to confide in."

Arguments for the Remonstrance.

If the Remonstrance appeared sweeping, it must be remembered that the Commons had not only to deal with the treacherous character of the King, but with a possible Royalist reaction, which would have swept away the popular rights already secured. The declaratory clauses of the Remonstrance passed without opposition, but a fierce struggle, which almost ended in bloodshed, occurred over the later and remedial clauses. Hyde, Colepepper, and Dering attacked the ecclesiastical provisions with great ability. Finally at two o'clock in the morning, on November 23rd, after a debate which had lasted since 9 a.m. on the previous day, the Remonstrance was carried in a full House by the small majority of eleven, the votes being 159 to 148. There was thus a large minority in favour of the King. Oliver Cromwell declared that, had the protest been rejected, "he would have sold all he had next morning, and never have seen England more. He knew there were many

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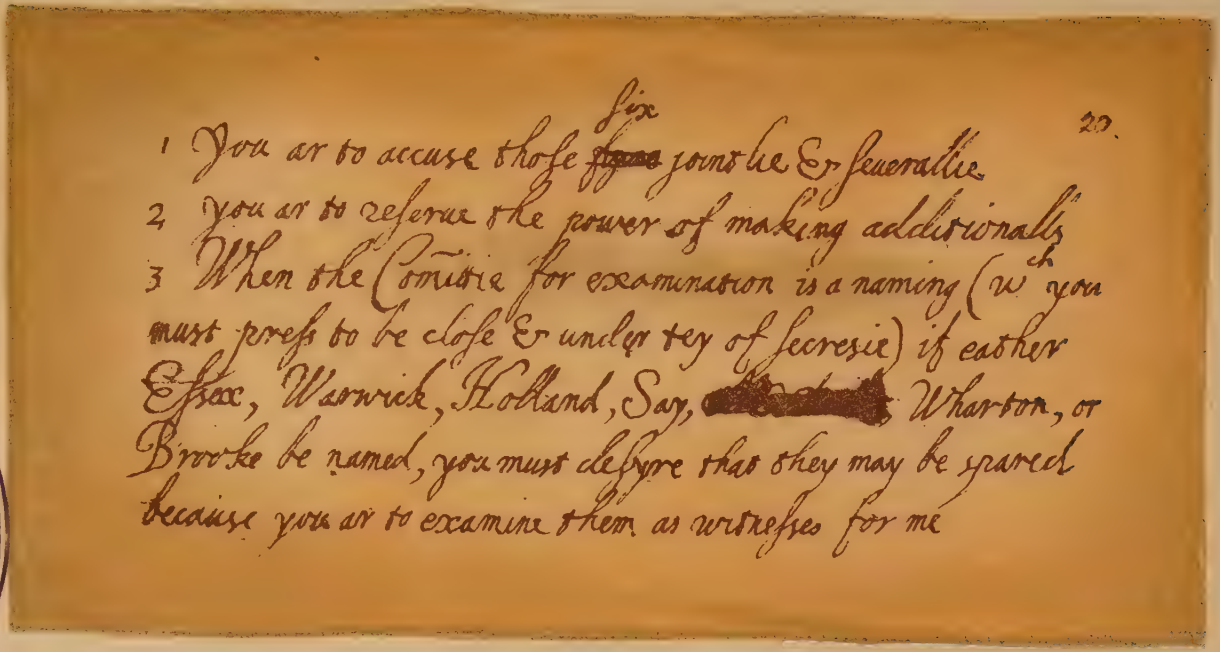
other honest men of the same resolution." There were well-founded fears of Popish influence; the Queen was detested for her idolatry; and there were grave apprehensions that Charles intended, if possible, to seize the leaders of the Constitutional party, both in England and Scotland. The first division on the Remonstrance did not end the struggle in the Commons. A second was called the same day, on the question whether the protest should be printed, and the popular side lost it by 124 to 101. But the matter was not allowed to drop, and on December 15th, when it was again discussed, the House was strangely excited. During the debate, members started to their feet with threatening cries and gestures, and some actually drew their swords. Above the din rose the strong, calm voice of John Hampden, and such was the personal influence of this truly noble man, that the strife was allayed and peace secured. The printing was carried by 135 votes to 83, and members walked home in the early morning light, wondering what the next move in the drama would be.

Charles attempts to seize the Five Members.

The Grand Remonstrance, which by its publication became common property, hopelessly widened the breach between King and Parliament, while it also served as a vindication of the Commons. Feeling that one or other must now succumb, and dreading lest the Parliamentary leaders should impeach the Queen, he resolved to be first with her assailants, and took the incredibly foolish step of attempting to seize the popular leaders themselves. He selected for his vengeance five of the most powerful and popular members of the House of Commons, John Hampden, John Pym, Denzil Holles, Sir Arthur Haselrig, and William Strode, and with these he united one peer, Lord Kimbolton. Sir Edward Herbert, the Attorney-General, was instructed to formulate the articles of impeachment, which were seven in number, to wit—the subversion of government and law, the authorship of the Grand Remonstrance, tampering with the army, traitorous negotiations with the Scots, efforts to subvert the rights and being of Parlia-

CHARLES I.'s HOLOGRAPH INSTRUCTIONS TO HERBERT,
RELATIVE TO THE IMPRISONMENT OF THE FIVE MEMBERS.



Six 20.

1 You ar to accuse those ~~fyue~~ yonr lie & seuerallie
2 You ar to reserue the power of making additionally
3 When the Comittie for examination is a naming (w^ch you
must press to be close & under key of secresie) if eather
Essex, Warwick, Holland, Say, [redacted] Wharton, or
Brooke be named, you must desyre that they may be spared
because you ar to examine them as witnesses for me

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH

ments, the raising of riots, and the levying of actual war against the throne. Pym announced from his place in parliament on January 3rd, that his trunks, study, and chamber had been sealed up by command of the King, which the House declared to be a violation of both law and privilege. The Commons were proceeding to urge a strenuous resistance, when the King's sergeant-at-arms arrived with a royal message, requiring that the five members, whom he distinctly specified by name, should be given up on the charge of high treason. The House sent a deputation to the King, stating, that an answer should be returned as speedily as so important a matter would allow, but meanwhile the members were ready to answer all legal charges. The Speaker commanded the five members to remain daily in attendance, and after giving an order to break the seals in the houses of the accused, and to take the sealers into custody, the House adjourned till the morrow, when it would sit in grand committee to consider the message.

Memorable Scene in the Commons.

On January 4th, 1642, there was enacted the most memorable scene which has ever been witnessed in the House of Commons. Assembling at 8 a.m. as usual, the House sat until twelve, during which time the five members spoke, defending themselves against the articles of impeachment. From twelve to one the Commons adjourned for dinner, and in the interim the five members were warned of the royal conspiracy against their persons. They all attended in their places, however, in obedience to the Speaker's orders. Goaded by his wife, Charles proceeded upon his fatuous and unconstitutional errand. Accompanied by his soldiers and courtiers, he set out from Whitehall for Westminster. Meantime, the House had met again, and considering there was an intention to take the five members away by force, it was moved, to avoid all tumult, that they be commanded to absent themselves. Upon this the House gave them leave to absent themselves, but entered no order for it, and then the five gentlemen went out of the House. One account states that the news of the King's approach,

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with a band of armed men, was conveyed to the House by a French officer, who in his zealous haste had clambered over the roofs of houses. The five members escaped by the river-stairs, Strode being dragged out by a friendly hand, and they took boat for the City. Immediately after they had left, the King came with all his guard and all his pensioners, and two or three hundred soldiers and gentlemen. Charles commanded the soldiers to stay in the hall, and sent the Commons word he was at the door. The Speaker was commanded to sit still, with the mace lying before him, and then the King came to the door, took the palsgrave in with him, and commanded all that came with him to remain outside. So the doors were kept open, and the Earl of Roxburgh stood within the door leaning upon it. The members took off their hats, and Charles did the same. Then the King went towards the chair, and the Speaker stepped out to meet him. Charles stepped up to his place, and stood irresolute. He did not sit down, and after looking about for a great while, he told the members that he would not break their privileges ; but treason had no privileges ; "he came for those five gentlemen, for he expected obedience yesterday, and not an answer." Then he put the question, "Is Mr. Pym here?" but no answer came. The same question was put with regard to Mr. Holles, but with the same result. He next asked the Speaker if they were present, or where they were? Upon this Speaker Lenthall fell on his knees, and with an unaccustomed boldness desired his excuse, for "he was a servant of the House, and had neither eyes to see nor tongue to speak in that place, but as the House was pleased to direct." The King told him his own eyes were as good as his, and then said "his birds had flown, but he did expect the House should send them to him. If they did not, he would seek them himself, for their treason was foul, and such a one as they would all thank him to discover." Then, completely baffled, Charles moved towards the door, amid audible cries of "Privilege! privilege!"

THE SPEAKER REFUSES TO TELL THE KING WHERE THE FIVE MEMBERS HAVE GONE

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This defiance of all Parliamentary right and legality bore its natural fruit. The Commons became more resolute in their attitude, while many hitherto favourable to the King were alienated from his side. When the House met on the 5th, it ordered a Committee to sit at Guildhall and discuss the King's unwarrantable intrusion. From the Guildhall the Committee moved to Grocers' Hall, where it passed resolutions touching the outrage and the encroachments of the King, the examination of witnesses regarding his violence on the 4th, the reception to be accorded to the five members, and the preparations for a triumphant return of the House to Westminster.

Effects of the King's action.

Charles left London for Hampton Court on the 10th, and on the following day the banks of the Thames between London Bridge and Westminster Bridge were lined with enthusiastic spectators, come to see the return of the five commoners from the City, where they had secured shelter in Coleman Street. Amid tumultuous cheering and the incessant roll of musketry and cannon, the barge bearing the members slowly made its way. The Speaker and the members received the Parliamentary heroes at Westminster. It was felt now that a grim struggle had begun.

Return of the Five.

The Commons set to work to guard themselves and the people against further outrage. In the Journals for January 12th appears the curious order "that another lock be set upon the door of the House, and daily care be taken that all places thereabouts be safely guarded." On the 13th, the King sent a message that he waived for the present his action against the members, but would "hereafter proceed in an unquestionable way." He was still more yielding on the 14th, when he intimated that "he never had the least intention of violating the privileges of either House, and in case any doubts remain will clear them in any reasonable way."

Charles temporarily recedes.

But on the 15th, the Commons voted that the impeachment of Lord Kimbolton was a high crime, and recommended proceedings against the Attorney-General, while Sir John Byron was ordered to be removed from the Tower

Measures of security.

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for his disobedience to the Parliament. Captain Skippon, a Puritan, and a supporter of the Parliamentary cause, was placed at the head of a guard, which was immediately formed in the City. London was thus secured for the Commons, in the event of the rupture with the King ending in actual hostilities. A Commission appointed by the Commons reported that the worst of all evils, and the greatest obstacle to peace, was "the influence which recusants, priests, and other malignants have over the Queen, the influence which these possess in the State, and the great influence which she has over the King." The Lords in vain protested against the energetic action of the Lower House, and several abortive conferences were held. On one occasion, Pym declared that the Commons would be very well content to have the help of the Peers in saving the country, but if they could not have it, they were determined to do their duty alone: but surely it would not come to be recorded in history, that the Lords, at a time of so great danger, had taken no part in saving the country. In February, the Upper House reluctantly gave its assent to the bill by which the bishops were excluded from Parliament. The Court for some time past had perceived the deadly nature of the struggle between the people and the Crown, and as there was now no place of security for the Queen, she and her daughter fled to Holland. But before leaving, Henrietta Maria extracted a promise from her husband that he would make no more concessions to Parliament.

Control of the Army.

The probabilities of war were now discussed, and the Commons took the momentous step of assuming control over the national militia, and investing the command in persons of their own nomination. The control of the army had always been a right of the Crown, but now that war between the Sovereign and the people had become a possibility, the House of Commons regarded its assumption of the military authority as the great safeguard of the nation. Lord Pembroke sought an interview with the King, and besought him to surrender to Parliament, at least for a short time, the control over the

army; but his Majesty answered, "Not for an hour." That answer practically sealed his fate.

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Hallam argues that there was so much in the conduct and circumstances of both parties in the year 1642 to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. With all deference to so great an authority, this seems beside the question. Necessity was laid upon every man to make his choice, and we can scarcely blame those patriotic men who espoused the cause of the Commons, and thus elected to support the rights of the many against the one. Even if there had been equal blame on both sides, which cannot for a moment be granted, it were better for the nation and for posterity that the cause of the people should triumph, than that the tyranny of the Stuarts should be perpetuated. It was quite true that, in its zeal for privilege, the Lower House had acted arbitrarily towards individuals; that it had strained its powers of commitment and impeachment; that it had sometimes coerced the Lords; and also that it had encroached upon the executive power by its ordinance for disarming recusants, passed in August 1641, and its order in the following November, authorising the Earl of Leicester to raise men for the defence of Ireland, without warrant under the Great Seal. But what were these acts, done professedly in the interests of a whole people, compared with a long series of acts of oppression perpetrated by Charles against the nation? Besides being guilty of many illegalities, he had been concerned in a conspiracy against Parliament; had acted unconstitutionally in the matter of the five members; had negotiated with the Presbyterian leaders in Scotland; had sent the Queen abroad with the Crown jewels, which, there was good reason to fear, would be used in raising an army; and was even now contemplating a war against one portion of his subjects with the aid of another.

Parties in 1642.

Excess of zeal on the part of the Commons could be corrected by the people, whereas if submission had been made to the King at this juncture, England must have

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irrevocably fettered herself with the chains of tyranny. Speaking broadly, it cannot be denied that the cause of Charles was, *de facto*, the cause of tyranny, whereas the cause of liberty was that bound up with the rights of Parliament.

The quarrel beyond compromise.

No doubt there were some Royalists opposed to unlimited prerogative; but from the light which has now been thrown on Charles's character, it is absolutely certain that he meant firmly to establish his own power and the Divine Right, if ever an opportunity presented itself. Dispassionate students of this period must come to the conclusion that, in 1642, the quarrel was beyond compromise, and that the question to be submitted to the arbitrament of arms was, not who should make a few concessions here and there, but who should be master, King or Parliament?

Final disruption.

Early in March, the House of Commons passed a resolution that the kingdom should immediately be put into a state of defence, and in this resolution the Lords, with some dissentients, concurred. Charles was moving northward when this decision was conveyed to him, and at Huntingdon, on March 15th, he issued a counter declaration, claiming the obedience of his subjects to the existing laws, and forbidding any compliance with orders not ratified by himself. In reply to the King's message, Parliament resolved, on the 17th, "That when the Lords and Commons in Parliament, which is the Supreme Court of Judicature in the kingdom, declare what the law of the land is, to have this not only questioned and controverted, but contradicted, and a command given that it shall not be obeyed, is a high breach of privilege." This was the precise point of disruption between King and Parliament. The latter already held the Tower of London, and a dispute arising as to the exercise of military authority at Hull, Sir John Hotham, as the servant of the Houses, entered the town as Governor, with orders to admit none but Parliamentary troops. The King himself arrived before Hull, but Hotham refused to admit him, declaring that when there was

hostility between the King and Parliament, he must obey the latter. The authority of Parliament was thus asserted in matters military as well as civil, and its powers were placed higher than those of the Sovereign. It was a critical incident; Charles declared Hotham guilty of treason, but the Commons replied by supporting him, and affirming that the King's action was a new breach of the privileges of Parliament.

Abortive propositions.

At York Charles obtained large promises of support from the gentry; Wales also declared in his favour, and, amongst English towns, Nottingham. In June, Parliament formulated nineteen propositions to be laid before the King. The chief claims put forward were:—that the system of Church government and the Liturgy should be changed in conformity with a consultation to be held with learned theologians, and with the resolutions of Parliament; that all nominations to high offices should require the approval of the two Houses; that the Privy Council should consist of only a fixed number of persons, all of whom must be approved by both Houses; and that the proposals in reference to the militia should be accepted, at least temporarily. The King rejected the propositions, which he said were the sort of conditions that are made with a prisoner. A number of Lords now separated from the Parliament and joined the King, and the seceders soon increased daily. Under a promise from Charles, on June 13th, twenty-five peers signed an agreement engaging to support, and if necessary fight for, "the just privileges of your Majesty and your two Houses of Parliament." Instead of this agreement inclining Parliament to make concessions, it embittered the feeling of the people's representatives, who denounced the evil-minded persons about the King, called "Cavaliers," as having no respect for the laws, and no fear of God or man. On the 17th, Parliament declared the country to be in danger, and on the 22nd, the Lords at York issued a similar declaration; and accordingly both parties now began to arm for the conflict.

The King wrote to the Lord Mayor and aldermen of

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London not to raise any forces for the Parliament, but the civic authorities threw off their allegiance. Parliament appointed a committee of safety, which included among its members Pym, Hampden, Martin, and Fiennes, leading commoners; and Essex, Northumberland, Say, and Holland, nobles identified with the popular cause. The Earl of Essex accepted the command of the Parliamentary forces, and his decision gave great impetus to the movement against the King. Parliament had already succeeded in securing the national fleet, and it now took charge of the revenues, collected the customs, contracted loans, and controlled the Exchequer. The Earl of Warwick was appointed to the control of the fleet in the interests of Parliament.

Action of the Parliament.

The King takes the field.

While Parliament was the first to assume war preparations, the King actually took the lead in drawing the sword. Towards the end of July he appeared before Hull, and here the first blood of the war was shed; but on the news that Warwick was coming with the fleet to the aid of Governor Hotham, the King was obliged to retire. On August 22nd, Charles unfurled his standard at Nottingham, and then moved westward. The first battle of the Civil War was the indecisive engagement at Edgehill, in Warwickshire, fought October 23rd, 1642.

Edgehill.

Oliver Cromwell.

Among those who served with distinction at Edgehill was Oliver Cromwell, and the name of this great man now enters largely into the records of the war and of Parliament. He was a native of Huntingdon, where he was born April 25th, 1599, being the son of Robert Cromwell and Elizabeth Stuart, and connected by blood with the family of Thomas Cromwell, Earl of Essex. Educated at Huntingdon School and at Sidney Sussex College, Cambridge, he returned home from the University on his father's death in 1617. Three years later he married Elizabeth, daughter of Sir James Bourchier, an Essex gentleman. In 1628, Cromwell entered Parliament for the borough of Huntingdon. He took part in the movement against Buckingham, and attacked the Bishop of Winchester for "preaching flat Popery," and silencing

PORTION OF THE INDENTURE OF RETURN OF TWO MEMBERS TO SERVE IN THE PARLIAMENT OF 3 AND 4 CHARLES I. FOR THE BOROUGH OF HUNTINGDON, SHEWING THE SIGNATURE OF OLIVER CROMWELL ON HIS FIRST ENTERING PARLIAMENT.

BOROUGH OF LEWISHAM
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The right hand side of the document is too much discoloured to allow of a facsimile being made; it is therefore impossible to furnish an intelligible translation. Oliver Cromwell's signature occurs in the left hand bottom corner.

controversial dissentients. After the dissolution of 1629, he returned to his farming operations at St. Ives, Hunts, where he was styled "Lord of the Fens," on account of his claim to Royal blood. He was returned to the Short Parliament as member for Cambridge in 1640, and sat for the same place in the Long Parliament. Within the first ten months of the latter Parliament, he was specially nominated on eighteen committees, and also held various appointments with the knights and burgesses, generally of the eastern counties. He moved the second reading of the Annual Parliament Bill on December 30th, 1640, and was one of those who drew up the Root and Branch Bill. It was he also who moved on November 6th, 1641, to entrust the Earl of Essex with power over the trained bands, till Parliament should make further orders. At the age of forty-one, Cromwell is depicted as a man of rugged exterior, with little personal comeliness, his chief characteristics being a massive strength and firmness, with a deep religious fervour and zeal. That he strangely impressed his contemporaries, however, is proved from the fact that his future greatness was predicted at an early stage of his career. He was a man of power, moved by profound thoughts, and a determination to preserve his country from kingly tyranny. He was the associate of Pym, Hampden, and other members of the more advanced party. When the war broke out he lent £300—a large sum at that time—to the Parliament, and raised a volunteer corps at Cambridge, with which he seized the magazine, and prevented the valuable University plate from being carried away. The regiment he enrolled, which came to be known as Cromwell's Ironsides, was famed for its valour. Everywhere victorious and invincible, it was but typical of the army which subsequently overthrew the throne, and made the name of England feared abroad. If Charles could have dipped into the future, he would have regarded with painful and yet fascinating interest this Parliamentary captain, who fought against him at Edgehill.

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In February 1643, negotiations were again opened between King and Parliament; but as the propositions respecting religion and the militia were renewed, and as Charles felt some confidence in the chances of war being in his favour, no settlement was arrived at. Queen Henrietta landed on the east coast of Yorkshire, and made her way to York, from whence she despatched men and money to her husband, who was lying at Oxford. Upon this the Commons resolved that as the Queen had levied war against the Parliament and kingdom, she should be proceeded against for high treason. The King remained inactive, but Prince Rupert made frequent sallies from Oxford, and on June 18th the Royalist cavalry encountered a body of Parliamentary troops under Hampden, at Chalgrove Field. During the skirmish Hampden was wounded in the shoulder by two carbine balls, which broke the bone and lodged in his body. He rode slowly from the field and made his way to a friend's house at Thame, where he died six days later, his last prayer being one for his country. The loss of this pure and unselfish patriot was terrible news to the Parliamentarians, and it was quickly followed by intelligence of the defeat of Fairfax by Newcastle, at Adwalton, or Adderton Moor. Then Sir William Waller was defeated at Devizes, and Bristol surrendered to Rupert after three days' siege. The advantage now was decidedly on the King's side, but it was not made the most of. In the eastern counties, however, Cromwell pursued a victorious course, keeping the entire district against the Royalists; and his vigorous action once more restored courage to the Parliamentary leaders.

Progress of the War.

Death of Hampden.

Efforts for peace

The loss of Bristol led Parliament to make another effort for peace. The Lords formulated a series of very moderate propositions, and the Commons, by 94 to 65 votes, agreed to take them into consideration; but London, as represented by the Lord Mayor, demonstrated vigorously against peace, and the Lower House eventually refused by a small majority to concur in the recommendations of the Lords. The Legislature was just now in a

difficulty with regard to the Great Seal. The Lord Keeper Littleton had borne it away with him to the King, and the executive government was, by a Parliamentary tradition, disabled by its absence. Without the Great Seal no election writs could be issued, no appointments filled up; and it is almost ludicrous, considering how the Commons were actually at war with the King, and the many important steps they had taken, that they should have been awed by the absence of a bauble, which by many was regarded as the depository of the royal authority. At last it struck them that, as the original seal was taken away, they might manufacture another, so in the Journals of the House, under date July 19th, we read, "Mr. Simonds to make a new Great Seal, and to have £100 for his pains." For three months the Lords would not concur in this, but when at last they consented, the Royalists looked upon the action as one of audacious treason. At a later stage, there was fierce verbal warfare over the virtues of the two seals, the new and the old.

A new Great Seal.

But an act of far greater significance was now completed. In return for Scottish aid rendered to the English Parliament, the Scots demanded that the mutual engagements of the two nations should be confirmed by a pact to which both nations should be sworn. Accordingly, in September, the *Solemn League and Covenant*, as drawn up by Henderson and amended by Vane, was adopted by the Westminster Assembly, which had been convened to consider the condition and reformation of the Church. It was then passed by the Parliament, and ordered to be subscribed and sworn to by the nation. England and Scotland were now bound in a common league against the King, and in favour of the reformed religion; and in conformity with the treaty of alliance the Scots Commissioners at Westminster were entrusted, conjointly with a Committee of both Houses, with the administration of public affairs. The English Committee, which was appointed in February 1644, consisted of eminent members of both Houses. About 230 members of the

The Solemn League and Covenant.

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Lower House and twenty to thirty peers subscribed to the Covenant, some reluctantly, and others with a secret reserve.

Death of Pym.

Pym had been the great mover in the alliance with the Scots, but he had scarcely seen its acceptance assured when he was stricken with mortal illness, and died at his house in London, December 6th, 1643. In Pym were combined the best qualities of a leader of men. He has been described as a combination of Siéyes and of Mirabeau. He had resolution and firmness in moments of supreme danger; he was bold and yet prudent, fertile in conception, and skilful in carrying out his projects. He was dangerous as an enemy, invaluable as a friend. No one ever devised more effectual measures for putting a check upon spiritual and political tyranny. He was one of the greatest figures in an age of remarkable men.

Execution of Laud.

The Anglican clergy were in sore straits after the passing of the Covenant. The King's party had been bitter persecutors of the Puritan element, and now Parliamentary Committees dealt severely with the "malignants," or royalists, and all who embraced High Church or Papistical doctrines. Archbishop Laud was actively proceeded against. He had long lain in the Tower, and in October 1643, specific articles of impeachment were drawn up. It was not until December 1644, however, that the charges were pressed to a final issue. Treason was alleged against him, partly on account of his Church innovations, and partly on the ground of his complicity in the violent proceedings of the Star Chamber and the high commission courts. The trial was ultimately given up, and a bill of attainder substituted for the impeachment. The Lords referred Laud's guilt to the judges, who found that the charges contained no legal treason. But the Commons considered they had abundant reasons for their action, and in the end, with the concurrence of the peers, the Archbishop was condemned to death. He was beheaded on January 10th, 1645.

Battle of Marston Moor.

Returning to the struggle between King and Parliament, in January 1644, 21,000 Scots marched into

England to the aid of the latter. The great battle of the next campaign was that of Long Marston Moor, near York, fought July 2nd, 1644. The two armies numbered about 20,000 men each. The Royalists were completely routed, and Marston Moor lost the North of England to the King.

The Uxbridge negotiations.

Charles returned to Oxford in November, and opened negotiations with Parliament at Uxbridge, in January 1645. Three subjects were discussed—the Church, the Militia, and the state of Ireland. With regard to the first, the Royalists offered a limited scheme of episcopal hierarchy, which some years before would have satisfied most reformers, but the Parliamentary negotiators now declined even to discuss it. On the points touching the militia and Ireland, it was equally impossible to come to an amicable understanding, and the negotiations fell through.

Cromwell and the Presbyterians.

Meanwhile the war went slowly forward, and the Parliamentary generals, Essex and Manchester, were accused of lukewarmness. Cromwell, who was a Root-and-Branch Independent, spoke out boldly concerning Manchester, who was a Presbyterian, and denounced his half-measures and the unnecessary protraction of the war. The quarrel soon assumed a more than personal aspect, for the divergence between the Presbyterians and the Congregationalists or Independents became more pronounced. The Presbyterians did not desire to abolish the Crown, but to curtail its authority and curb its action ; but men like Cromwell, who were the ruling spirits of the Independent party, made no secret of their opinions, that the future of England depended neither on the Crown nor on the House of Lords. Cromwell was also ready to draw the sword against the Scots, rather than suffer the imposition of their hierarchical system upon the English. The Presbyterians soon saw what a powerful opponent they had in Cromwell, and they attempted to crush him, but in vain. Already he was recognised as a man of commanding ability, courage, and sagacity. He, and perhaps only

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he, grasped the real nature of the struggle that was looming in the future.

The Self-denying Ordinance.

The famous Self-denying Ordinance sprang out of these difficulties. This measure was brought forward in the Commons by Mr. Zouch Tate, member for Northampton, who was seconded by Sir Harry Vane, one of Cromwell's chief supporters. Tate's resolution proposed "that no member of either House of Parliament shall during the war enjoy, or execute any office or command, military or civil, and that an ordinance be brought in to that effect." The ordinance passed the House of Commons on December 19th, 1644, by the small majority of 100 to 93 votes. The Lords rejected it, "on the ground that they did not know what shape the army would suddenly take"; whereupon the Commons produced an army scheme called the "New Model," which provided for the enrolment of an army of twenty-two thousand men, which was to cost £45,955 per month, and was to be raised by assessment throughout the kingdom. The force was to be commanded by Sir Thomas Fairfax, with Skippon as Major-General, and the officers were to be nominated by the Commander-in-Chief, subject to the approval of the two Houses. The scheme was accepted by both Houses, and a second self-denying ordinance was introduced, which passed the Lords on April 3rd, 1645. It provided that all members of either House, who had since the beginning of the present Parliament been appointed to any offices, military or civil, should vacate those offices within forty days. But it differed from the first ordinance in that it did not prevent members from taking office on any future occasion. Although Cromwell was a member of the House of Commons, he was allowed to continue in his command as Lieutenant-General.

New Army Scheme.

A second Ordinance.

The Model Army.

The new Model Army soon justified its existence; and notwithstanding that it was frequently reviled by the Royalists, Clarendon described it years afterwards as "an army whose sobriety and manners, whose courage and success, have made it famous and terrible all over

the world." On June 14th, 1645, the decisive battle of Naseby was fought between the Cavaliers and Roundheads. It was Cromwell again who turned the tide in favour of the Parliamentarians, and the Royalists were defeated with great slaughter. This victory was followed by the taking of Bristol, and other important Parliamentary successes in the West of England.

Battle of Naseby.

Early in 1646, Charles saw that his affairs were desperate, and after a few months of indecision, he appeared at Newark on April 28th, and surrendered to the Scots.

Charles surrenders to the Scots.

The King had been shut up between a choice of evils, and that evil counsellor and intriguing woman, the Queen, had forbidden him either to think of escape or of abdication in favour of the Prince of Wales. Parliament had published his correspondence seized at Naseby, which was of a most compromising character. In his letters Charles had shown himself so subservient to Henrietta, the enemy of England, that he had agreed to a design for putting an end to the Parliament, and had given her power to treat with the English Catholics, promising in return for their support the abolition of the penal laws against them. Then followed the discovery of the Glamorgan Treaty. The Earl of Glamorgan had concluded a secret compact with the confederate Irish Catholics, promising not only the repeal of the penal laws, but the establishment of their religion in, by far, the greater part of Ireland. When thrown into prison at Dublin on a charge of treason, Glamorgan produced two commissions from the King, secretly granted, without any seal or the knowledge of any minister, containing the fullest powers to treat with the Irish, and promising to fulfil any conditions into which he should enter. Upon this Charles disavowed his agent, and wrote to the Parliament that he had merely given him a commission to raise men for his service, but no power to treat of anything else, without the privity of the Lord-Lieutenant. It has been abundantly proved, however, that the King did give Glamorgan the papers in question, but with his usual talent for subterfuge, while

The King's correspondence.

The Glamorgan Treaty.

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he commissioned Glamorgan to remove Irish distrust if possible, he so couched his letters both to Ormonde, the Lord-Lieutenant, and Glamorgan, that in the event of a discovery of the correspondence, he could show that it was not his intention to act without the knowledge and sanction of the former.

The King delivered to the Parliament.

The Scots, who were well aware of the King's character, removed their royal prisoner to Newcastle, but were perplexed what to do with him. In the end, they resolved upon delivering him up to the English Parliament, and he was accordingly surrendered to the Presbyterians, who had no thought of offering violence to his person.

Conduct of the Scots.

The Scots have suffered much obloquy owing to the form of the surrender ; but their conduct does not deserve all the censure that has been heaped upon it. In handing Charles over into the keeping of England, they hoped that either he would accept their propositions, or that they would be able to attain their objects without his aid. At the same time, a new agreement was concluded between England and Scotland, whereby the English Parliament agreed to discharge all arrears due to the Scots, amounting to £400,000, by instalments, £200,000 to be paid at once. It thus at first sight appeared that the Scots had sold the King to the Parliament, but this was not so : the £200,000 which the Scots received, was but a portion of the subsidy promised them long before for their support of the cause of the English Parliament. It is true that Parliament might have declined to pay the arrears unless the King had been given up, but the fact must not be lost sight of, nevertheless, that the arrangement as to the arrears of pay preceded all stipulations to deliver up the King. Another very significant circumstance is also pointed out. That party in the House of Commons which most earnestly desired to obtain possession of the King's person was the one which also desired to arrive at an understanding with him, though upon constitutional and not divine-right principles ; while those who opposed the negotiations were the most determined enemies of the King, and these latter also included the Republicans. On

January 30th, a fatal day in the history of Charles I., the King passed into the hands of the English Parliament. He was conveyed to Holmby House, in Northamptonshire, where he arrived on February 16th, 1647.

The Presbyterians and Independents.

Now began the struggle between the Independents and the Presbyterians. The former were weak in Parliament, but overwhelmingly strong in the army. In one respect the Presbyterians were at first masters of the situation. They had secured the general imposition of the Covenant, and the substitution of the directory for the Common Prayer; and in February 1646 an ordinance was passed establishing for three years the Scots model of classes, synods, and general assemblies throughout England. The House of Commons, however, guarded the ordinance with a check, which galled the religious pride of the Presbyterians. The Independents were reinforced by the Erastians, and these two parties combined negatived a declaration of the divine right of Presbyterian government, and voted a petition from the Westminster Assembly—complaining of a recent ordinance as an encroachment in spiritual jurisdiction—to be a breach of privilege. Presbyterian tribunals were made subject to the appellant control of Parliament, and cases meet for discipline were defined by law. But the Presbyterian feeling was very strong in London and other quarters, and the practical question for the Independents was, how to secure Presbytery with a toleration, instead of Presbytery without one. The dictatorial tone of the Presbyterians in the House drove several members into the opposite faction; yet, to show the power of the Presbyterians, an ordinance was brought in to suppress blasphemies and heresies as capital offences; and, although it was long delayed by the Independents, it finally passed both Houses. The Presbyterians stood firmly against full liberty of conscience; but they could not persuade the House of Commons to suppress the sectaries, though no open indulgence was yet granted. The Independents claimed, and still claim, to have been the first to carry out the great principles of religious toleration; and notwith-

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standing isolated cases of persecution which occurred while they were in power, their contention was in the main just.

Checks upon the soldiery.

Early in 1647, the Presbyterian majority began to move in the Commons. They found it extremely desirable to disband a part of the army, and to send the rest into Ireland ; also to overthrow Cromwell. A resolution was passed on March 8th, that no member of the Lower House should hold a command, in the garrisons of certain fortified places, or in the army, and that no higher military rank than colonel should be suffered to exist, under the general-in-chief. It was further decided, by 136 votes to 108, that the officers of the army should one and all accept the Covenant, and conform to the Church system established by Parliament. This would have effectually checked Independency in the army, but events soon went beyond the Presbyterians.

The army seizes the King.

The army, weary of waiting for their arrears of pay, and objecting to forced service in Ireland under new commanders, assembled on Kentford Heath, Newmarket, to discuss the position of affairs. Meantime, one Cornet Joyce, of Whalley's Horse, with five hundred horse, rode from London to Holmby House, and taking possession of the King, brought him to the army at Newmarket. Parliament believed, and no doubt rightly, that Cromwell was the soul of this new movement, but Joyce had really acted on the instructions of an army committee. On June 10th a great body of 21,000 soldiers gathered on Triploe Heath, near Cambridge, and Cromwell appeared upon the scene, accompanied by the Parliamentary Commissioners. The army marched with the King towards London. At Hounslow Heath it was met by the two Speakers, and many lords and commoners. The soldiers marched through London, and Charles was conveyed to Hampton Court.

The Commons coerced.

This bold policy intimidated the Commons, who expunged, by a majority of 96 to 79, a vote of reprehension it had passed upon the army some weeks before. But the soldiers demanded more than this. They called for

the trial of eleven obnoxious members, including the Presbyterian leaders, Holles and Waller. These members, having obtained permission, left the House and the country. Legislative power and civil government were now for a time suspended, and military authority predominant. The Independent interest became the stronger, and Parliament annulled the elections to the committee on the City militia, by which the Independents had been excluded. But in the City of London the Presbyterians were powerful, and on July 26th the Common Council appeared at Westminster, with a large mob, composed of apprentices, sailors, and others, and compelled the two Houses by actual violence to rescind their late votes. The Presbyterians in the House of Commons, however, were really devoid of any actual power, and although they resisted the growing predominance of their opponents, they could not arrest the movement which resulted in making Cromwell and the army masters of the situation.

Army proposals laid before Charles.

Negotiations between the King and his subjects still went forward. While Charles was secretly corresponding with the Presbyterians and Irish Catholics, he at the same time received Ireton at Hampton Court, with new proposals for a settlement. These army propositions were more liberal than those of the Presbyterians as touching the Church, but they struck deeply at the royal prerogative. The King rejected the propositions, and, as proofs of his duplicity were soon in the hands of those who made them, this proved to be Charles's last chance of escape from the toils which surrounded him.

The Adjutators.

Cromwell was at first honestly inclined to treat with the King, and his attitude gave great offence to the Adjutators (or Agitators), a body elected by the various regiments of the army. These and the pronounced Levellers, or extreme Republicans, would not hear of any agreement with the King, whom they denounced with fierce anger and bitterness. Charles became so alarmed by the threats against him, as well as by the failure of his intrigues, that on a stormy November night

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Flight of the King.

he fled hastily from Hampton Court, and made his way to the Isle of Wight. Here he gave himself up to Colonel Hammond, who, in accordance with instructions received from Parliament, committed him to custody in Carisbrooke Castle. From this fortress the King made another attempt at a pacification, offering to confirm the Presbyterian government for three years, to give up the militia during his whole life, and to make other concessions. But it was too late. The Adjutators had acquired sway in Parliament, and the Commons in December passed four bills, which, amongst other things, demanded the entire military authority, together with the right to impose the taxes necessary for the maintenance of the army, unconditionally, for the next twenty years, whether the King lived or died; after that period this power might not be wielded by the Crown without the assent of Parliament, but might be by Parliament without the assent of the Crown; for every resolution passed by the two Houses was to be considered as having the royal assent. The King was to create no new peers without the consent of the two Houses; recent nominations were to be cancelled; and all orders and decrees against the acts of Parliament and its adherents were to be cancelled.

Threatening attitude of the Commons.

Charles rejected the bills, and there was now much talk of bringing him to trial; while Ireton and Cromwell, asserting that the King was refusing to his people security and protection, and that Parliament must now govern by its own power and resolution, became as hostile in their demeanour towards him as the Adjutators. On January 3rd, 1648, the House of Commons resolved henceforth to send no addresses to the King, and to receive no messages or letters from him, and communication with him without the leave of Parliament was declared to be high treason. It was further decided to renew in relation to England and Ireland, irrespective of the Scottish members, the authority possessed by the committee of the two kingdoms, and Independents took the place of excluded Presbyterians. On the committee of seven lords and fourteen com-

moners, which assumed the supreme power, were Haselrig, Cromwell, and the two Vanes. Those who secured the lead in Parliament became known as the Grandees. They exercised unbounded power, arranging by committees the weightiest affairs of State before submitting them to the House of Commons, taking the control of money matters, and regulating the press and public amusements.

The Scots treat with Charles.

The Scots, greatly disquieted at the way in which matters were tending, had already concluded a secret treaty with the King at Carisbrooke, by which they guaranteed him the rights denied to him by the four bills, while Charles agreed to recognise the League and Covenant between England and Scotland. The Scottish Committees, Parliament, and the people alike, endorsed the treaty concluded by the Commissioners.

The Second Civil War.

What is called the second Civil War ensued. It was not to be expected that the English Parliament would yield to certain demands, which the Scots put forward, as to treating with the King, and the sword was again consequently drawn. After risings in Kent, Essex, and Wales had been suppressed by Fairfax and Cromwell, the latter marched to meet the Scottish Presbyterians, commanded by Hamilton. Completely defeating them at Preston, Cromwell pushed on to Edinburgh. On October 4th he entered the city, and immediately issued an address to the Committee of Estates. He demanded that all malignants and authors of the troubles should be permitted to hold no public place or trust whatever, without the consent of England, and this was conceded, the Scotch government being thus completely remodelled. The failure of Hamilton's expedition dashed Charles's hopes down to the ground.

Treaty of Newport.

During Cromwell's absence in the north, the Presbyterians made a final effort to conclude an alliance with the King by the treaty of Newport. The Presbyterian leaders urged the unfortunate monarch to yield to the propositions of Parliament, or to state at least how far he would be prepared to go ; but the conditions offered him were such as he had again and again refused. By this

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treaty, indeed, if it had been carried into effect, the Scottish system would have been established in its least objectionable form, and Parliament would have held the balance of power for a long period, while at the same time the monarch would have been retained. The House of Lords was in favour of the treaty, and the Commons by resolution admitted that it formed an excellent basis for opening negotiations; but the army would have none of it. At a meeting of officers of the army and independent members of Parliament, it was unanimously resolved that the situation had become intolerable. Meantime the King, at the instigation of Cromwell, had been removed from Carisbrooke and taken to Hurst Castle. Parliament protested on December 4th against the King's removal, and requested General Fairfax to arrange for his conveyance to London.

Pride's Purge.

The army leaders, however, who were bent on bringing the King to trial, saw that the whole strength of the position lay in putting a stop to the treaty between him and the Parliament. There was only one way of accomplishing this—namely, by excluding the Presbyterians from the House. This violent measure was carried into effect on December 6th, and the proceeding was given the name of "Pride's Purge." The army, which had been in possession of London for three or four days, surrounded the House of Commons with the regiments of Colonels Pride, Hewson, and Hardress Waller. As the members appeared, Pride, who held a list of the House in his hand, prevented all those from entering who were objected to, and imprisoned those who resisted. The number of the arrested amounted on the second day to 47, while 96 were excluded. On the 7th a paper, called the "Humble Proposals and Desires," was presented to the members still sitting, on behalf of the council of officers, setting forth the demands of the army. Cromwell was thanked for his great national services, and the House decided, by 50 to 28 votes, to proceed with the consideration of the proposals. Among the members imprisoned were D'Ewes, Fiennes, Prynne, Rudyard, Strode, and

Sir William Waller. Ludlow stated in the House that "Cromwell did not come to London till the night after the first interruption of the House by the army, and that he publicly declared that he had not been acquainted with that design; yet, since it was done, he was glad of it, and would endeavour to maintain it."

Story of the exclusion.

As a Parliamentary episode, this exclusion of the members is second only in graphic interest to the attempted seizure of the five members by the King. Its more prominent incidents are thus detailed by an eye-witness hostile to the Independents:—Colonel Pride, with Colonel Hewson and Sir Hardress Waller, personally directed the seizure of the members. Some were taken at the doors, others in the lobby, and on the stairs near the House, without any warrant, or reason alleged (but the sword and power), as they were going to discharge their duties. Among others, Colonel Pride seized upon Mr. Prynne, going up the stairs next the House, and told him, "Mr. Prynne, you must not go into the House, but must go along with me." Mr. Prynne demanded "by what authority and commission, and for what cause, they did thus violently seize on, and pull him down from the House?" To which Pride and Waller, showing him their armed soldiers, standing round about him with swords, musquets, and matches lighted, told him that "there was their commission." To which Mr. Prynne answered, that "they were no legal commission, nor cause for them to seize upon him, being a member"; and openly protested, that "it was a high breach of the privileges of Parliament, and an affront to the House; stir he would not thence of his own accord"; whereupon they forcibly pushed him up into the Queen's Court, where some other members, a little before seized, were kept prisoners by them.

The House demands its members.

The House being informed of this violence upon Prynne, and the high breach of privilege in seizing him and other members, sent the serjeant-at-arms to demand them of the captain that guarded them, and to command their immediate attendance in the House, but the message was

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slighted and disobeyed; whereupon the House ordered the serjeant to go a second time, on this occasion with his mace, and demand the members, and bring them into the House forthwith, as the Commons refused to do any business until their members were restored; but Pride and his confederates forcibly detained the serjeant in the lobby, and would not suffer him to go to them; whereupon, returning into the House, he acquainted them with the contempt, which was entered in the Journal. The House concluded not to proceed until the members were restored; and now sent a Committee to the General to demand them. Notwithstanding this, the officers still proceeded to seize more members, as they came to, or went from, the House, carrying them all prisoners to the Queen's Court. As the public excitement cooled down, the members were gradually released, but it was many weeks before some recovered their freedom.

Action of the Commons.

The Commons, now greatly thinned in numbers, proceeded vigorously with their work. They revoked their former resolutions for restoring the impeached members, and on the 13th annulled all former votes for a personal treaty with the King, stigmatising all efforts in this direction as "highly dishonourable to the proceedings of Parliament, and apparently destructive to the good of the kingdom." A protestation of the imprisoned and secluded members, against the violence committed on them, was declared to be false, scandalous, and seditious.

The "Purge" unconstitutional.

The proceedings of the army, in which Independent members of the House were implicated, were undoubtedly most violent and illegal. In the abstract they cannot for a moment be defended, yet they probably saved London from anarchy. "Pride's Purge" was an act of revolution, but it was a bloodless one; and there was such a fearful state of tension between the two opposing parties at this juncture, that had it not been for the high-handed act of the army, a still worse state of things must have ensued.

The King at Windsor.

Major Harrison arrived at Hurst Castle on December 18th, to convey the King to Windsor, and on the 23rd

he arrived, with his illustrious prisoner, at that historic residence of the Sovereigns of England.

The Commons discussed the punishment of delinquents on the same day, aiming at the King, who was spoken of as the greatest delinquent. It was resolved to name a committee of thirty-eight persons to consider of drawing up a charge, with power to receive all informations and evidence of witnesses. When it was first mooted in the House to proceed capitally against the King, Cromwell rose in his place, and said that if any man moved this designedly—that is, attempted to compass the death of the King—he should think him the greatest traitor in the world ; but since Providence and necessity had cast them upon it, he should pray God to bless their counsels, though he was not provided on the sudden to give them advice.

Parliament moves against him.

Ordinance appointing his trial.

On January 2nd, 1649, the House of Commons passed a resolution declaring, "That by the fundamental laws of this kingdom, it is treason in the King of England, for the time being, to levy war against the Parliament and Kingdom of England" ; and they added an ordinance for erecting a High Court of Justice, for the trying and judging Charles Stuart, King of England ; to both which they desired their lordships' concurrence. The Upper House rejected the message. The ordinance passed by the Commons set forth the King's "wicked designs totally to subvert the ancient and fundamental laws and liberties of this nation, and in their place to introduce an arbitrary and tyrannical government." For prevention, therefore, of the like or greater inconveniences, "and to the end that no other chief officer or magistrate whatsoever may hereafter presume, traitorously or maliciously, to imagine, or contrive, the enslaving or destroying of the English nation, and to expect immunity for so doing," it was enacted and ordained that the Earls of Kent, Nottingham, Pembroke, Denbigh, and Mulgrave ; the Lord Grey of Warke ; Lord Chief Justice Rolle of the King's Bench ; Lord Chief Justice St. John of the Common Pleas ; and Lord Chief Baron Wylde ; the Lord

Fairfax; Lieutenant-General Cromwell, etc., should be commissioners and judges for the hearing, trying, and judging of the King. The Commissioners, or any twenty or more of them, were thus authorised and constituted a High Court of Justice, and General Lord Fairfax and all well-affected citizens were required to facilitate its sittings until the trial was concluded and judgment pronounced. The Commissioners numbered about 150 in all; but many of them refused to act; some attended only once or twice at committees; Fairfax himself appeared on the first meeting of the Commissioners, but not afterwards; others sat in judgment upon the King, but did not sign the warrant for his execution; and the rest went through every circumstance from first to last.

The Lords reject the ordinance.

The ordinance was vigorously denounced in the Lords, and "cast out" unanimously; the following being the peers present who rejected it:—Denbigh (Speaker), Northumberland, Mulgrave, Pembroke, Rutland, Kent, Manchester, North, Hunsdon, Maynard, Dacres, and Berkeley. Next day the Commons drew up another ordinance for the King's trial, leaving out the names of the six peers and the three judges.

The Commons proceed alone.

On the 4th, the Commons having again met, the door of the House was ordered to be shut, and no member suffered to go out of it. After debate, the following resolutions were adopted: "That the Commons of England, in Parliament assembled, do declare that the people are, under God, the original of all just power. And do also declare, that the Commons of England, in Parliament assembled, being chosen by, and representing the people, have the supreme power in this nation. And do also declare, that whatsoever is enacted, or declared for law by the Commons, in Parliament assembled, hath the force of a law, and all the people of this nation are concluded thereby, although the consent and concurrence of King, or House of Peers, be not had thereunto." Two days later, the Commons, having been informed that the way of escape for the King was easy, ordered, "That the General be acquainted therewith, and that he be required

to take speedy and special care for close securing the King's person, and preventing any recourse to him, unless by order from the House." It was also resolved to bring the King to trial, on the 8th inst., in the Painted Chamber. The act for erecting a High Court of Justice was read a third time, and passed.

The Lords temporise.

A partial change now seems to have come over the Lords, or such of them as attended the Upper House. On the 9th, their lordships met, and appointed a committee to prepare and bring in an ordinance to this effect: "That whatsoever King of England shall, hereafter, levy war against the Parliament and Kingdom of England, shall be guilty of high treason, and be tried in Parliament." But nothing came of this effort to effect a compromise. The ordinance was never brought in, for it was remarked at the time, that the House of Lords, as well as the King, seemed now in a dying condition. The daily attendance at the House averaged no more than five or six, and little or no business of consequence was done.

A new Great Seal.

The Commons now agreed upon having a new Great Seal, on which was to be engraven, on one side, a map of England, Ireland, and the islands of Jersey and Guernsey; with the arms of England and Ireland, by which they were "differenced" from other kingdoms. The inscription of the map side was to be, "The Great Seal of England, 1648"; on the reverse, a sculpture of the House of Commons sitting, with the motto, "In the first year of Freedom, by God's blessing, restored, 1648." It seems that the device, and more particularly the inscriptions on the seal, "were the fancy of Mr. Henry Marten."

Trial of the King.

The King's trial was now rapidly proceeded with. The High Court of Justice, as finally constituted, consisted of 135 Commissioners; but when the Commissioners met on January 8th, in the Painted Chamber, only 53 members were present. The trial was proclaimed by sound of trumpets and the beating of drums, and the Commons destroyed the Great Seal. John Bradshaw was chosen president of the Tribunal. He was well qualified as regards legal knowledge, though he was little known in

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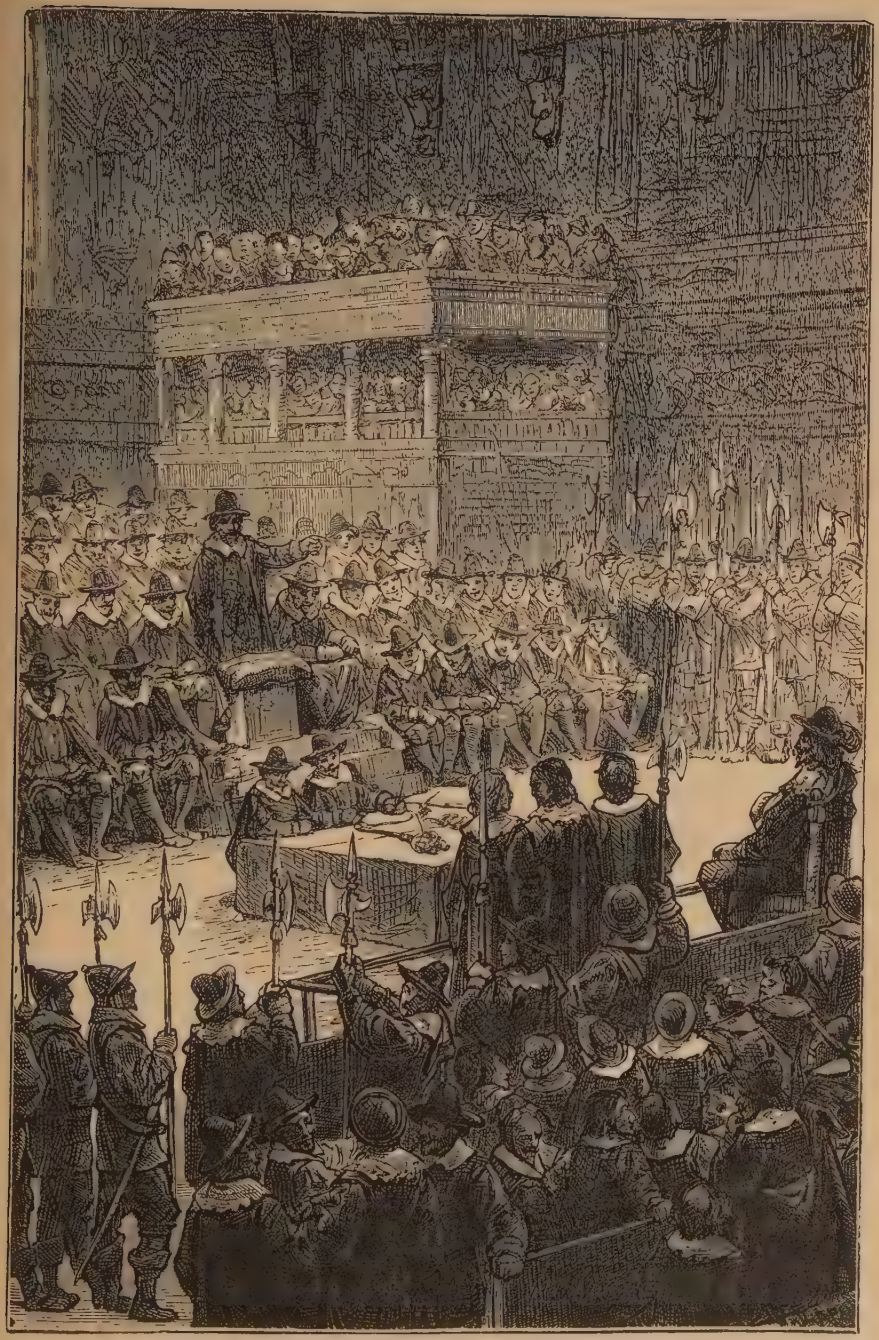
other respects. The post was given to him because all the leading lawyers refused to serve. The counsel for the Commonwealth were Coke, acting Solicitor-General, Aske, Steel, and Dorislaus. The trial was formally opened on January 20th, in the upper end of Westminster Hall. When the King appeared, he was conducted to a velvet seat prepared for him at the bar. He did not remove his hat, nor did the members of the Court. Addressing him as "Charles Stuart, King of England," Bradshaw unfolded the purpose of the trial. Coke began to state the charge, but Charles tapped him on the shoulder with his cane, and cried, "Hold!" He laughed ironically at that portion of the indictment which charged upon himself the blame and blood of the Civil War. When the Lord President requested him to answer to the accusations, the King asked first to be informed by what lawful authority he was there tried; to a lawful authority he would submit, but to recognise an unlawful authority would be to violate the duty he owed to God. Bradshaw retorted that the Court took its authority from the people of England, whose elected Sovereign he was. Denying that England was an elective kingdom, Charles still refused submission to the Court, on the ground that there could be no true authority, seeing that the Lords and the King were necessary to constitute a Parliament. The Court then adjourned.

Charles rejects the tribunal.

The next sitting was held on Monday, the 22nd. Again the King assumed a defiant attitude, whereupon the President told him that he could not be allowed to dispute about the Court's authority. Next day the Commissioners met to confer, and then proceeded to Westminster Hall, where a scene similar to those which had gone before was enacted. The President stated that the Court had weighed the objection made by the accused, but had convinced itself that its competence, being founded on the authority of the Commons of England, admitted of no doubt. The King again proceeded to call in question the authority of the Court, when Bradshaw interrupted him with the remark that the Court sat



TRIAL OF KING CHARLES I. IN WESTMINSTER [illegible]

BOROUGH OF LEWISHAM
MANOR HOUSE
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there in the name of the Commons of England, to whom the King was answerable, like his forefathers. Charles asked for precedents ; and not being allowed to pursue the subject farther, he afterwards wrote down his arguments, which consisted chiefly of the positions—that no procedure was lawful except it was in accordance with the law of God or the law of the land ; and that the King could not be tried by English law, for every indictment ran in his name, and the old principle was that the "King could do no wrong." According to Charles's theory, there was no bringing a monarch to account, no matter what crimes he had been guilty of. It was true there was no precedent for the trial of a Sovereign, but circumstances might arise which should create one : accordingly Charles's appeal to his divine right was met by a similar claim by the Commons on behalf of the people. The sovereignty of the people, and the divine right of kings, thus came into open conflict.

His condemnation and

The Scots protested against the treatment of the King, and tradition says that the army once more made overtures to him, which Charles declined. On the last day of the trial, January 27th, Bradshaw appeared in scarlet, and as the King entered the Court he perceived a grim change in his judges. His heart now failed him, and he pleaded for another hearing, but this Bradshaw refused. The President again referred to the people, by whose authority the King had been arraigned for tyranny, when from the midst of the audience Lady Fairfax cried out, "No ! not half the people." The sentence was then read, by which Charles Stuart was condemned to death for his treasons and his crimes. The King was greatly moved, and after another vain attempt to obtain a hearing, turned away. The warrant for his execution, dated January 29th, bore fifty-nine signatures. At ten o'clock on the morning of the 30th, Charles walked from St. James's to Whitehall, having Bishop Juxon on the one side and Colonel Tomlinson on the other. Arrived at the scaffold, which was surrounded by armed men, the King addressed the people. He asserted that Parliament

Execution.

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had begun the war by claiming the command of the militia; that evil instruments had severed from him the affections of his subjects; that an unjust sentence, to which he had assented, was now falling fatally on his head in just retribution—referring to the death of Strafford; and that he died the "martyr of the people." He recovered his courage, affirmed that he died in the faith of the Church of England, turned to Juxon and pronounced the word "Remember!" and then laid his neck upon the block. The executioner did his work, after which he lifted up the King's head, and exclaimed, "This is the head of a traitor!" The crowd gave a visible shudder, accompanied by a deep groan, and the mournful tragedy was over.

Views of the regicides.

While many of the regicides were moved by a spirit of fanaticism and a hatred of the King begotten of his many tyrannies, there were some who looked upon the death of Charles as a real State necessity. Ludlow and Hutchinson were fair types of these, men neither moved by blind passion nor religious intolerance. Ludlow was convinced that an accommodation with the King was unsafe for the people of England, and unjust and wicked in the nature of it. As regards Hutchinson, who was a high-souled patriot, Mrs. Hutchinson states that he diligently sought guidance in prayer; "and finding no check, but a confirmation in his conscience, that it was his duty to act as he did, he, upon serious debate, both privately and in his addresses to God, and in conferences with conscientious, upright, unbiassed persons, proceeded to sign the sentence against the King."

The King's trial and death considered.

The struggle between Charles I. and Parliament was the most important in its nature and consequences of any that has been waged in England between sovereign and people. Concerning the secondary question of the King's execution, we need say but little. Few defend it, yet there are few also with full knowledge of Charles's character who would now speak of the victim as a "blessed martyr." Under the pressure of supreme necessity a nation would be justified in putting its

sovereign to death, but such an overwhelming cause could scarcely be said to exist in 1649, when the Commons were paramount, and the King's power for evil had been crushed. Further, the court which condemned him was not such an adequate representation of the nation as to deserve immunity for its act, even had it been justified in acting in the place of lawful authority in the interests of the realm. The tribunal which condemned him was but a very small minority of the House of Commons, and it relied for its usurpation upon the sword. At the same time the views of those who condemned the King demand also to be fairly stated. They argued that so long as political crimes continued to be punished, which was both necessary and inevitable, Charles deserved death for his breach of faith at the time of the Newport treaty. With the King living, they said, the nation was no longer safe, and they were therefore justified in sweeping out the majority of the House of Commons, ignoring the House of Lords, and establishing a new tribunal. They did not pretend to have legal precedents for what they did, but as they believed they were supported by the people at large, and were certainly so as regards the army, they determined to bring the King to trial. They gave Charles the opportunity of, at least, repelling the charges against him, but he, knowing that he had no real answer to these charges, persistently denied the authority of the court. That being the case, they were resolved to proceed to the bitter end, even the death of the King if necessary, in order to ensure the security of the kingdom.

Constitutional aspect of the struggle.

But on the great broad constitutional questions which underlay the struggle, Parliament was undoubtedly in the right. The King's violations of liberty, especially after the Petition of Right, were inexcusable, and only proved that the King claimed the right to do as he liked with the people. Charles fought all through for his own hand, and wilfully ignored the privileges of Parliament. It became necessary to demonstrate to him the futility of a contest between one man, though a King, and a whole

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nation. There is something higher even than a sovereign, and that is the people. The Stuarts flung themselves into a violent conflict with the nation, and were worsted. That the second monarch of the race lost his head by his blind obstinacy and his subversion of the principles of the constitution may be matter for regret as far as Charles personally is concerned, but there can be no regret over the failure of his policy. When a King declares that he will neither separate the obedience of his servants from his own acts, nor permit them to be punished for executing his commands ; and when he follows this up by illegal impositions upon the people, and outrages against their representatives in Parliament, the time has arrived when a nation must assert itself. It was Charles who began the fatal course of conduct that ultimately recoiled upon his own head. He it was who first subverted all the legal bases of the State, thereby leading to an act of summary vengeance which remains unparalleled in our national history. The Parliament of England could desire no nobler vindication than that uttered by the great Chatham : " There was ambition, there was sedition, there was violence ; but no man shall persuade me that it was not the cause of liberty on the one side, and of tyranny on the other." The whole State organisation was overthrown by the King's policy ; it could only be brought back to its normal order by popular resistance. In the struggle Charles fell, and the circumstances were so unique and peculiar that we have no criterion by which to judge them. What was of much more moment to the future of England is the fact that Parliament triumphed; for by its victory were laid anew the foundations of the popular power, while the doctrine of Divine right was shattered in the dust, and kingly tyranny was for ever rendered impossible.

BOOK VII.

THE COMMONWEALTH.

CHAPTER I.

EXPULSION OF THE LONG PARLIAMENT.

Abolition of the Upper House and the

THE King being dead, the Commonwealth of England took up the executive power. The Lords were desirous of working with the Commons if a *modus vivendi* could be established, and on February 1st named a committee to deliberate with the Lower House on the settlement of the government. The Earl of Northumberland was added to the committee on the 5th, and on the following day the peers, after making an unimportant order, adjourned till "to-morrow." That "morrow" did not arrive for eleven years, for on the same day that the Lords adjourned, February 6th, 1649, the Commons resolved that "The House of Peers in parliament is useless, dangerous, and ought to be abolished"; and after this the peers met no more.

Monarchy.

This step was followed on the 7th by a still greater constitutional change, the abolition of the monarchy. The Commons of England resolved "That it hath been found by experience, and this House doth declare, that the office of a king in this nation, and to have the power thereof in any single person, is unnecessary, burdensome, and dangerous to the liberty, safety, and the public interest of the people of this nation, and therefore ought to be abolished, and that an Act to this effect be brought in." Bills were carried through for the abolition

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of the monarchy and of the House of Peers, and the arms of the late king were ordered to be everywhere taken down and those of England to be set up.

Council of State elected.

Legal scruples arose with regard to the change of authority. Six judges agreed to act, and six declined; but owing to the energy of Bulstrode Whitelocke, the difficulties attending the legal basis of the Commonwealth were surmounted. A council of State was elected on February 14th. It consisted of forty-one members, nearly all of whom bore notable and honoured names, including Bradshaw (President), Cromwell, St. John, Fairfax, Vane, Skippon, Haselrig, Ludlow, the Earls of Denbigh, Mulgrave, Pembroke, and Salisbury, Chief Baron Wylde, Sir James Harrington, Bulstrode Whitelocke, Lord Lisle, Henry Martin, and John Hutchinson. The duties of the Council were defined as follows: to resist all attempts to restore the monarchy, to maintain peace at home, to reduce to subjection Ireland and the islands which had not yet submitted, to preserve a good understanding with foreign powers, to protect Englishmen abroad, and to promote home trade. To achieve these objects, the Council was given the control of the land and sea forces, while it was empowered to draw upon the revenue for the public service, and it had authority to administer oaths and imprison refractory persons in time of danger. The executive powers of the Council of State were in fact those of the king and parliament combined.

Severe measures.

As many of those forming the Council of State declined to take the oath formally approving the execution of the King, sanctioning the abolition of the monarchy and the House of Peers, and asseverating the supreme authority of the House of Commons, the Lower Chamber was content with their taking an oath to stand by the existing Parliament in defence of the Republican government, without king and lords, and to follow its instructions. They declined to be responsible for the past, while now accepting the sovereignty of the people. The Council had many moderate men in it, but the majority were strong opponents of monarchy, and severe measures were

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speedily adopted. A list of those regarded as traitors to the Commonwealth was published, and Charles's two sons were exiled, with the proviso that they should be instantly executed if they ventured to return. The Duke of Hamilton, the Earl of Holland, and Lord Capel were beheaded on March 9th for their determined adherence to the royal cause. Other stringent measures were necessary to preserve authority, and a sharp lesson was even taught Lilburne and the Levellers, who had done so much for the triumph of Republicanism, by the summary vengeance executed by Cromwell on the leaders of a mutiny at Burford, in Oxfordshire. But the ideas of the Levellers, which aimed at the abolition of taxes, with State provision for all who would work and an eventual equality in all things, property included, made considerable progress, and gave the Council and Cromwell great trouble in checking them. It was erroneously conceived that Cromwell would support the advanced views of the Levellers ; on the contrary, he perceived in them a grave danger to the State, and in his resolve to suppress them he was seconded by the army.

Cromwell in Ireland.

Sterner work still now called Cromwell to Ireland. The Protestant Royalists and the native Roman Catholics were united against the Parliamentary forces shut up in Dublin. Cromwell appeared and changed the whole aspect of affairs. He stormed Drogheda on September 11th, 1649, and afterwards pleaded the absolute necessity for swift retribution in justification of the severe measures adopted. The surrender of Wexford and various other towns followed, and in the spring of 1650 Cromwell was able to leave Ireland, after a sanguinary, but from the military point of view brilliant, campaign. Ireton carried on the work, which was completed by Ludlow, and the whole of Ireland was reduced to subjection.

Campaign in Scotland.

To Scotland now the victorious general of the Commonwealth was summoned. Charles II., as he was termed, had landed, had been proclaimed king, and had sworn to the Covenant. Defeated by Cromwell at Dunbar, the Scots pushed southwards, and with the young prince reached

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Worcester. Here a terrible doom overtook them, for on the anniversary of Dunbar they were utterly crushed by the Ironsides. Cromwell said of his victory at Worcester, "The dimensions of this mercy are above my thoughts. It is, for aught I know, a crowning mercy." This language was not too strong, for the Royalist cause was practically annihilated.

Holland and the Commonwealth.

Abroad, the Commonwealth caused itself to be feared and respected by its victories over the Dutch, gained by Admiral Blake. Besides the fact that the House of Orange and the House of Stuart were allied by marriage, the Dutch found a serious grievance in the British Navigation Act. By this Act, which passed the House of Commons on October 9th, 1651, it was especially provided that all goods from countries beyond Europe should be imported into England in English ships only, and all European goods either in English ships or in ships belonging to the countries from which these articles originally came. This struck a heavy blow at Dutch trade, and, combined with the already strained relations existing between the two countries, led to war. The Dutch were signally defeated, and by a series of splendid naval engagements England laid the basis of her supremacy at sea.

Domestic difficulties.

Parliament was not without its domestic difficulties, however. To meet some of them, on February 24th, 1652, it passed an amnesty act, proclaiming forgiveness to the adherents of the King for all political offences previous to the battle of Worcester, provided they pledged themselves to be faithful to the Commonwealth as now established. But the army and the House were not in accord, and the people rather looked to the former than to the latter. Cromwell was likewise troubled by the abuses of the administrative power, and the imprisonments and confiscations, which had become well-nigh intolerable. Many Parliamentary leaders led scandalous lives, and all sought to make their power perpetual, while the Presbyterian clergy were denounced for grasping at the good things of this world.

More than this, the nation, being without a head,

became the prey of faction, and this turned many in favour of Royalty who had never been really against the monarchical principle, but only against its errors in Charles I. Others were alienated because of the violent suppression of the Episcopalian worship.

Results of faction.

The Commons now began to tremble for their own existence. Various schemes of amendment were suggested; and there were some who, like Sir Henry Vane, were anxious to prevent sweeping changes. A partial renewal of the House and the connection of the actual franchise with a fixed amount of property were two of the objects aimed at. There were fears that an entirely new, free parliament would prove a Royalist parliament, and in that case liberty and Puritanism would soon be levelled with the dust. It was accordingly proposed that those who had seats should retain them, but that there should be elections to vacant seats. The old members, nevertheless, were to have the power of vetoing the new, if they deemed them unfit to serve; and so, verbally at least, but not in fact, there would be a free parliament. The House voted that tithes should cease as soon as a competent maintenance could be otherwise secured for the clergy; it appointed a commission to consider the reformation of the law, in response to the repeated petitions against many of its inconveniences and abuses; and it resolved that future parliaments should consist of four hundred members, to be chosen in due proportion by the several counties. On the question of its own duration protracted debates took place; but on November 14th, 1651, the House resolved that it should cease to exist as a parliament on November 3rd, 1654. This decision exasperated one section of the Republicans, who were in favour of short parliaments.

Changes in the Commons.

Cromwell on the situation.

The new Parliamentary scheme found little favour with Cromwell. He objected that the new legislature would be merely a continuation of the old, and a succession of power established practically without the people; and he complained that no security was offered for religious liberty under the new Parliament. In these points he

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was consistent with his old opinions. Matters went on from bad to worse. The Parliament desired to perpetuate its own powers, while the army leaders besought Cromwell to send it about its business. The latter had the power, and he was also supported in the country, but he declared that when the matter was first broached to him "his hair stood on end when he considered the consequences." But the end was hastened by the corruption prevalent in parliament. Royalists were ordered to compound for their estates, but the injunction was not equitably carried out, for members took bribes in many cases to let the compounders off easily; the public service had become the home of nepotism; and justice was so set at nought that the nation was weary of its burdens.

His course of action.

Cromwell saw all this, and was at length driven to the forcible dissolution of the Long Parliament. There are some who can find nothing but evil in all that this great man did; but in this grave matter, as in many others, he simply acted from what he conscientiously regarded as an overwhelming necessity. Parliament was becoming contemptible and effete, and he dreaded lest all the results of the Civil War should be lost by a Royalist reaction. He was therefore anxious for the establishment of constitutional securities, which would limit the powers of a freely elected parliament; and, supported by his officers, he proposed that a joint army and parliamentary committee should be nominated to deliberate on the requisite securities. On April 20th, 1653, he finally addressed a meeting of officers at the Cockpit, urging upon them the duty of undertaking the reform of the realm, but not with the existing Parliament, which thought only of continuing its own power.

The Long Parliament expelled.

News came that Parliament was hurrying through its own bill in defiance of his objections. Upon this he at once left for the House. On arriving, he sat down in his usual seat, where he quietly remained until the question was put for the final division. Then he arose and reproached the Parliament for committing iniquities, perpetrating acts of tyranny, ambition, and oppression,

and serving its own selfishness. Sir Peter Wentworth said: "This was the first time he had ever heard such unbecoming language given to the Parliament." Cromwell continued: "Come, come, I will put an end to your prating. You are no parliament. It is not fit you should sit here any longer." He then stamped with his foot, and the soldiers entered. He bade them clear the House. There were only fifty-three members present, and as they were driven forth Cromwell addressed many of them individually with words of obloquy. Then, taking up the mace, he said: "What shall we do with this bauble? Here, take it away." By way of justifying his action he added: "It is you that have forced me to do this. I have sought the Lord night and day that He would rather slay me than put me upon the doing of this work." All the members either retired, or were expelled, and the Speaker was "assisted" from his chair. When the House was cleared, Cromwell took up the bill on which members were to have voted, and going out with it, ordered the doors to be locked.

The Council of State dispersed.

Returning to the officers who were awaiting him, Cromwell told them what had occurred. "The Spirit was so upon him," he said, "that he was overruled by it, and he consulted not with flesh and blood at all, seeing the Parliament designing to spin an everlasting thread." It was now necessary that they should go forward with him hand in hand, for a momentous step had been taken. Next day Cromwell, accompanied by Lambert and Harrison, entered the room where the Council of State were assembled, and informed them that their powers had ceased, since parliament was dissolved.

Effect of the changes.

The dismissal of the Long Parliament was followed by no domestic dissensions or resistance. But England was now in the strange and unprecedented position of having neither king, lords, nor commons. There was neither executive nor legislative body, and as the initiative of government must devolve upon some one, there were no shoulders but those of Cromwell capable of bearing the weighty burden. How would he acquit himself under the new conditions?

CHAPTER II.

THE LITTLE PARLIAMENT.

Declaration by Cromwell.

CROMWELL issued a declaration of his grounds for dissolving the late parliament, and further unfolded his views when requested by the representatives of civic bodies to summon another parliament. The King and the Lords, he remarked, had fallen not because of their position as such, but because they had failed to fulfil their trust. The army was now the national power, plainly called by God through its victories to look after the government of the land.

The Assembly of Nominees.

But while these were the views held by Cromwell and the army leaders, there was no intention on their part of grasping at the civil administration. The army formed only a provisional government, compelled thus to act owing to the national emergencies, but it did not intend to wield the civil authority after a proper representative basis had been laid. The General and the Council of Officers resolved, after consultation, to call together a body of 140 nominees. They were to be all "God-fearing men, who had given proofs of their fidelity, energy, and devoted zeal for the cause of God." The selection was made on the principle of the relative amount contributed by each county to the taxes, and Yorkshire sent eight members, Devonshire seven, Kent five, Cambridgeshire four, but Westmoreland only one. London contributed seven, and the last on the list was a

The Little Parliament.

rich Puritan, Praise-God Barebone, a leather merchant of Fleet Street. The Cavaliers fastened upon this quaint appellation, and derisively called the assembly Praise-God Barebones Parliament, by which it has been frequently known. But by recent historians it is styled the Little Parliament, or the Assembly of Nominees. It was long the fashion to traduce the composition of this parliament, but for so small a body it contained many distinguished men. Among those called to it were Francis Rouse, Provost of Eton College, who was elected Speaker; General Monk, afterwards Duke of Albemarle; Admiral Blake, Lord Lisle, Sir William Brownlow, Sir William Roberts, Alderman Titchbourne, Alderman Ireton, Sir Gilbert Pickering, Sir Charles Wolseley, and Sir A. Ashley Cooper. To the 140 were added Major-Generals Lambert, Harrison, and Desborough, and Colonel Tomlinson. Though the majority of the assembly held strong Puritan views, it was not the mere hotbed of fanaticism sometimes represented by its enemies.

Praise-God Barebone.

Meeting of the Little Parliament.

The Little Parliament met on July 4th, and Cromwell addressed it in a long and vigorous speech, dealing chiefly with the reasons for the dissolution of the last parliament. He committed to the members the charge of the peace and safety of the country, and invested them, as the Council of Officers had decided, with the supreme power and control of the Commonwealth. Obedience was to be rendered by all to their commands. When the Lord General had ended "this very grave, Christian, and seasonable speech," he produced the instrument of authority, signed and sealed by himself, constituting any forty of the members the supreme authority of the nation, but with a proviso that the sittings of the parliament were not to be extended beyond November 3rd, 1654. On the first day of business Mr. Rouse was called to the chair for a month, this being the only ceremony used in appointing a Speaker, and he was re-elected each succeeding month so long as the parliament lasted. The title of "Parliament of the Commonwealth

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The Little Parliament.

of England" was next adopted. That most of the nominees attended and bore their share in legislative work is proved from a division which took place on July 6th, when the ayes were 65 and the noes 46, or a total of 111 members out of 140.

A legal revolution.

This parliament entered upon a course of searching reforms. On August 5th it abolished the Court of Chancery, and so unanimous was the House on this great matter that a division was not even challenged. It had been alleged that "for dilatoriness, changeableness, and a faculty of bleeding the people in the purse-vein," the Chancery Court might compare with, if not surpass, any court in the world; that there were depending in that court twenty-three thousand causes, some of which had been there depending five, some ten, some twenty, and some thirty years; that there had been spent therein many thousands of pounds, to the ruin, nay utter undoing, of many families; that what was ordered one day was contradicted the next, so that in some causes there had been five hundred orders and more; in short, it was affirmed that the Chancery was a mystery of wickedness and a standing cheat. So the ancient institution was overthrown, and commissioners were appointed, unconnected with the legal profession, to preside in the courts of justice. Parliament also determined to abolish tithes, and to effect radical reforms in the statute law. For the latter purpose a committee was appointed to inquire in each particular what was agreeable to the law of God and to reason, to settle the proportion between the crime and the punishment, in doing which they started with the definition of treason which plays so important a part in English history. It was resolved to draw up a new legal code for England, after the model of the brief, concise, and intelligible code which was already in operation in New England. Although these reformers acted with great precipitation and lack of judgment in some matters, they for the first time adopted some improvements in judicial procedure—touching the prevention of fraudulent conveyances, the recovery of

rents, etc.—whose value has ever since been acknowledged.

Domestic measures.

Marriage was treated by this Parliament as a civil contract. It took the ceremony out of the hands of the clergy, and put it into those of the justices of the peace. It thus only made imperative what was rendered permissible by legislation adopted two centuries later. Against duelling the Parliament of 1653 was very severe, condemning the challenger to lose his right hand, principals to have their property confiscated and to be banished for life; while he who killed his antagonist was to die the death of a murderer. Oaths were abolished, except the oath of allegiance to the Commonwealth or the oath of office. The right of spiritual patronage was peremptorily rejected, and tithes were pronounced to be an institution of the old dispensation which the Gospel had already swept away. A decree was passed enacting that all lands charged with tithes should henceforward be exempted from paying them.

New dangers.

This question hurried on the crisis which for some time had appeared inevitable. Things were making against the Parliament, its own untempered zeal most of all. It disturbed the minds of the thoughtful to see such an institution as the Court of Chancery swept away without the least compunction. Holders of property next took alarm. Then, in addition to the professed Levellers, there was a new sect of religionists assuming considerable prominence — viz., the Fifth Monarchy men. These men believed that, since Assyria, Persia, Greece, and Rome had perished, the time had come for the establishment of the millennial monarchy of Christ, and they looked upon themselves as the chosen saints to inaugurate this rule. Altogether there seemed good grounds in the eyes of some persons for dreading the triumph of anarchical principles. To a subversion of law and order Cromwell was resolutely opposed; he had sternly punished the Levellers; and it was not without reason that magistrates, civic authorities, the

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clergy, and all who had a real stake in the country, should look to him to prevent the new disorders with which England was threatened.

The Parliament at work.

The assembly, or parliament, was proceeding actively with its labours, when it came to a sudden and violent end. It had prosecuted Colonel Lilburne, and brought in a number of bills, including one for uniting and incorporating Scotland into the free State and Commonwealth with England. It also proceeded to the election of a new Council of State. On the day of the selection 113 members were present, and it is noteworthy that, although the House was greatly divided upon the other members of the Council, the Lord General Cromwell received every one of the 113 votes.

It suddenly breaks up.

Army questions were agitating the assembly at the time of its dissolution. A bill for the continuance of the land-tax, by which the land forces and the navy were supported, was being vigorously discussed, with complaints from London and elsewhere as to the inequitable adjustment of the tax. The bill did not pass, and the army became impatient, as certainty of pay and strict discipline were the bases of Cromwell's successful martial organisation. A deadlock ensued, for the majority of the assembly did not see eye to eye with the army. The last vote of the House was the one already referred to on the subject of ministers and tithes, which negatived the report of a committee of investigation. On December 12th the minority in the House assembled early, and resolved to surrender their powers into the hands of Cromwell. The Speaker left the chair, and was accompanied by the sergeant with the mace. They were instantly joined by the chief clerk, and followed by about 80 members, who went directly to Whitehall, and there subscribed a resignation of their power to the Lord General. Cromwell at first declined to receive it, but was prevailed upon to do so by the earnest representations of Major-General Lambert and others that the welfare of the nation absolutely required it.

Thus fell the Little Parliament, or, as it might fairly

be entitled, the Assembly of Enthusiasts. It is not the spirit of this parliament in its desire to rectify abuses that must be condemned, but its haste and mistaken zeal, which outran its judgment, and threw it into antagonism with many of the most influential classes of the community.

Cause of its fall.

CHAPTER III.

THE PROTECTORATE OF CROMWELL.

Cromwell's position.

Much has been written on the question whether it was a settled object with Cromwell to seize upon the supreme power. It does not come within the scope of a History of Parliament to discuss this matter at length; but I have arrived at that point in his career when some reference to it is imperative. Cromwell was a man of deep intuitions, and it is not unnatural to suppose that, amidst the chaos of parties, he anticipated the occurrence of circumstances which might necessitate his assumption of the office of chief governor. A calm review of the whole course of his conduct tends to show that he was not the slave of ambition he has sometimes been painted, but was moved first and foremost by love of his country. He had the substance of power long before the symbol of it was offered to him. The victory at Naseby had made him the most powerful man in England, and he had consolidated his position by overthrowing the alliance between the King and the Presbyterians. Then, after his victorious campaigns, which firmly established the authority of the Commonwealth, it was only to be expected that he must come to a final issue with the majority of the Long Parliament, whom he credited with the design of overthrowing the structure of liberty it had taken him so long to build up. That struggle came, and Cromwell again triumphed. As his was the master-mind of

England at that juncture, it is difficult to see how the result could have been otherwise.

But the Lord General has now been carried forward another stage. When he called together the Assembly of Nominees, it was with the object of reform, not revolution ; and it was only in obedience to his ultimate principles of social order and security that he alienated himself from it and rejoiced over its downfall. When the Little Parliament immolated itself, and gave back its powers to the Lord General as representing the army, it invested him *de facto* with the functions of civil government. That being the case, a crisis had arisen in the very seat of government, and many looked to Cromwell as the natural head of the people.

He is urged forward.

On December 13th, 1653, a council of officers and others met to consult upon the affairs of the nation. "After several days' seeking of God and advising therein," it was resolved that a council of godly, able, and discreet persons should be named, to consist of not more than twenty-one and not less than thirteen ; and that His Excellency (Cromwell) be chosen Lord Protector of the three nations of England, Scotland, and Ireland.

Becomes Lord Protector.

The installation of Cromwell took place on the 16th, in Westminster Hall, with considerable pomp and ceremony. There was a rich chair of state prepared for the Lord Protector, who came dressed in a suit of black velvet, accompanied by his life-guard. The Lords Commissioners of the Great Seal stood on each side of the chair, and His Excellency on the left hand of it, all bareheaded ; round about the chair stood all the judges and the Council of State ; the Lord Mayor and aldermen were placed on the right side of the court, and the chief officers of the army on the left. Major-General Lambert advanced, and after declaring the dissolution of the parliament and the great exigency of the times, did, in the name of the army and of the three nations, desire the Lord General to accept of the Protectorship. Cromwell having consented, the *Instrument of Government* which had been prepared was read aloud, and the Protector took

His installation.

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the prescribed oath. He pledged himself not merely to conform to its provisions, but in everything to govern the nation according to its laws, statutes, and customs, and to maintain peace and justice. "While he next declared that he accepted the high office because he recognised it to be the wish of those assembled and the will of God, he added, under a powerful impulse of thought, a prayer that his power might endure only so long as it remained in perfect agreement with the Word of God, and tended to the furtherance of the Gospel and the maintenance of the people in their rights and property."

Imposing ceremonies.

During the reading of the oath His Excellency held up his right hand, and lifted up his eyes to heaven with great solemnity and devotion. When the oath had been subscribed, Major-General Lambert, kneeling, presented the Lord Protector with a sword in the scabbard, representing the civil sword, which His Excellency accepted, and put off his own, thereby intimating that he would no longer rule by the military power. Then the Lords Commissioners of the Great Seal, the judges, and officers of the army, invited him to take possession of the chair of state as Lord Protector of England, Scotland, and Ireland, which he did, and sat down with his head covered, having a gold band about his hat, the court continuing all bare. Next the Lords Commissioners surrendered to him the purse and seals, and the Lord Mayor of London his sword, which were presently delivered to them back again by his Highness, with an exhortation to use them well; and then after a salute the court rose, and the procession returned to Whitehall, the Lord Protector being everywhere greeted with the greatest enthusiasm. On the 19th, the Protector was proclaimed by sound of trumpet in the Palace Yard, Westminster, the Old Exchange, and several other places in London; the ceremony being subsequently repeated in every city and county in England.

Value of the Protectorate.

Cromwell's Protectorate marks another notable stage in our Parliamentary history. His title was not an un-English one, for it had been borne on several occa-

sions by appointed representatives of kings during their minority. Hallam is sometimes harsh in his judgments of Cromwell's conduct, but he admits that his assumption of the title of Protector was a necessary and wholesome usurpation, however he may have caused the necessity; "It secured the nation from the mischievous lunacy of the Anabaptists, and from the more cool-blooded tyranny of that little oligarchy which arrogated to itself the name of Commonwealth's men." Moreover, although it was an evidence of the omnipotence of the army, the *Instrument of Government*, under which he took his title, accorded to him no unnecessary authority. While that important document reserved for the Protector all appointments and the granting of favours, in all the essential affairs of state he was to be bound by the opinion of the Council.

The Instrument of Government.

The provisions of the *Instrument* had so wide a bearing upon Parliament and the Constitution, that they call for a fuller exposition. The articles were forty-two in number. The executive power was vested in the Protector and a council consisting, as we have seen, of from thirteen to twenty-one persons appointed for life. The meeting of Parliament was fixed for September 3rd, 1654, and until then the Protector, with assent of the Council, could make ordinances to have the power of laws. The legislative power was, after the meeting of Parliament, to be vested in that body alone, and though bills were to be submitted to the Protector for his assent, he had no power to veto them if they were themselves in accordance with the Constitution. Parliaments were to be called of necessity every three years, and when summoned could not be dissolved for five months, except by their own consent. By a reform in the representative system Scotland and Ireland were now each to have awarded them thirty members, while the number of members from England and Wales was reduced from five hundred to four hundred. The number of county members was largely increased, many corrupt boroughs were disfranchised, and important places like Manchester,

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Leeds, and Halifax received representatives. Two classes of electors were to be disfranchised: first, all Roman Catholics and those concerned in the Irish rebellion were disabled for ever; and secondly, all persons who had been engaged in war against the Parliament since January 1642, except such as had given signal testimony since then of their good affection, were disabled from electing or being elected for the next parliament and the three succeeding parliaments. Article 12 directed it to be expressly asserted in the writs that the persons elected should not have power to alter the government as vested by the *Instrument* in a single person and a single parliament.

Its bearing.

This *Instrument of Government* was on the whole an enlightened document. It was "the first of hundreds of written constitutions which have since spread over the world, of which the American is the most conspicuous example, in which a barrier is set up against the entire predominance of any one set of official persons by attributing strictly limited functions to each."[1] Among those admitted to exercise the franchise under the new scheme there was distributed a fair and equal representation, and Parliament was invested with the fullest constitutional rights. Two things seem to have been aimed at in framing the *Instrument*: a government chosen in accordance with the wishes of the people, and one actually administered by men of proved capacity and integrity.

Effects of the new government.

During the interregnum before the summoning of Parliament, Cromwell proved himself to be a great, wise, and sagacious ruler. He overcame many difficulties which had been created by the Assembly of Nominees, reforming Chancery and not abolishing it, and making arrangements for the provision of an able and efficient clergy, without inquisition into opinion, beyond ascertaining that it was Puritan. Abroad, his government

[1] Dr. S. R. Gardiner: *The First Two Stuarts and the Puritan Revolution.*

was soon received with favour by all the leading European States, and he concluded favourable treaties with Holland, Sweden, and Denmark. The Protector was surrounded also by men who have shed lustre upon the time. The immortal John Milton was his Secretary for Foreign Languages; Sir Matthew Hale was a judge of the Common Pleas; and John Thurloe was Secretary of State.

Cromwell's first Parliament.

The writs calling a parliament were issued in June,[1] and the new House met on September 3rd, 1654—"a day," says Hobbes, "chosen superstitiously by Cromwell, because it had proved so fortunate to him at Dunbar and at Worcester." The Protector addressed the members in the Painted Chamber on the 4th, telling them that they were met on the greatest occasion England had ever seen, for upon their shoulders lay the interests of three great nations, with the territories belonging to them. "Truly," he added, "I believe I may say without any hyperbole, you have upon your shoulders the interest of all the Christian people in the world." He expressed a hope that the new House would put the finishing stone on the national fabric. Great must have been Cromwell's astonishment when he learnt that the House immediately began to call in question the very bases and interpretation of the *Instrument of Government*. The Protector's party desired to have the whole *Instrument* approved at once, but under the lead of Haselrig and Bradshaw, who were opposed to the Court party, the House resolved, by a majority of 141 to 136, to form itself into a committee for the purpose of discussing the question whether the government should be in one single person and a Parliament. Members who objected that the House, having been elected in obedience to the Protector's summons,

[1] It is not a little curious that among the six members returned for the West Riding of Yorkshire we should discover one bearing the name of "John Bright," while one of the members returned for Rutlandshire was "Edward Horsman," and of the five returned for Hertfordshire one was "Lord Salisbury." It is thus not aristocratic names alone which are perpetuated in England.

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had virtually recognised his power, were told that such a restriction could not bind them, as the people committed the supreme authority to its representatives unconditionally.

It attempts to limit his power.

The points of difference between Oliver and his Parliament were very clear and definite. Admitting the excellence of the Protector's government, Parliament objected to its basis, that of military force. In other hands than his, it might be wrongly used. The House therefore demanded that Cromwell should act under parliamentary limitations imposed upon his office. On the other hand, the Protector saw equal danger in giving too much power to the Commons. In the course of a few years they might even abandon that great principle of toleration for which so much blood had been shed. Consequently, in this new crisis, he resolved to use the force he had acquired and made his own.

The Protector remonstrates.

The Protector desired Parliament to meet him on the 12th in the Painted Chamber, and he then and there expounded his views with some warmth. Having called God to witness that he had not sought his place, he went on to point out that every government assumed certain fundamental principles, and, in the present case, the principle on which all depended was that the government consisted of a single person and the Parliament. He held his power by a title valid in the sight of God and men, and demanded that it should be recognised. Parliament, he maintained, ought not to make itself perpetual, nor should it have absolute control of the military forces, for what then could resist it? Fundamentals must stand; and the liberty of England, the liberty of the people, the avoiding of tyrannous impositions, either upon men as men, or Christians as Christians, were made so safe by the Act of Settlement, that it spoke sufficiently for itself. "I say," added his Highness, "that the wilful throwing away of this government, such as it is, so owned by God, so approved by men, so testified to, in the fundamentals of it, and that in relation to the good of these nations and posterity, I can sooner be

willing to be rolled into my grave, and buried with infamy, than I can give my consent unto."

Declaration of Allegiance.

Cromwell concluded by telling the members that they had an absolute legislative power in all things that could possibly concern the good and interest of the public, and he demanded that they should sign a declaration, not only of assent to the existing Constitution, but of allegiance to the Lord Protector. The Speaker and about one hundred and thirty members subscribed the recognition forthwith, and resumed their seats in the House. A hundred declined to sign. When the House met again on the 14th, a vote was carried to the effect that in taking the declaration it was only to be understood that members agreed to the principle of government by a single person and successive Parliaments, and not that it bound them to the whole forty-two articles of the *Instrument of Government*. With this reservation, which, however, was a most important one, the declaration was passed without a division, and the recognition was subscribed by 193 members more. The majority of those who signed were determined to cling to their asserted right of revising each article.

Prolonged debates.

For nearly four months the House debated the various provisions of the *Instrument*. On October 19th it began to discuss the question whether the government in a single person, as Protector of the Commonwealth, should be elective or hereditary. In this debate, Lambert, in a long speech, endeavoured to persuade the Parliament that it was necessary to make the office of Protector hereditary; but, upon the question being put, it was decided in the negative by 200 against 60,[1] which greatly surprised both the public and the Protector's family, though Cromwell himself was against the office being hereditary. From November 1st to January 16th the debate on the government was continued three days in every week, forenoon and afternoon, without any

[1] Ranke says this vote was carried without a dissentient voice, but the records give these figures.

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intermission. The House limited the right of the Protector to confer dignities and honours by deciding that these should not be hereditary; and it narrowed his right of pardon by excepting the crimes of murder and treason. It was resolved that the Council of State should be nominated by the Protector and approved by Parliament, and that no war should be undertaken without the consent of Parliament. Repressive measures were ordered against heresy, and especially Socinianism. As to the military authority of the Protector, it was enacted regarding the local militia that it could not for the future be called out without an Act of Parliament, while the strength of the regular army was seriously reduced. Parliament next reserved to itself the right, on the death of Oliver Cromwell, of disposing of the army as it should think fit, and even of disbanding it. All these changes were in the direction of making Parliament supreme, and of diminishing the prestige of the army, which it was now felt tended to overawe the House of Commons. Besides declaring the office of Protector elective, Parliament decided that the choice should not rest with the Council of State, but exclusively with itself. It claimed this to be an original right of the people, which must be exercised through its representatives.

The Parliament dissolved.

All these acts, some of which were in direct contravention of the original articles of government, were distasteful to Cromwell, who, instead of discussions upon the articles, had been looking for the passing of useful laws and the granting of the land-tax, which was necessary for the support of the army. He held high views concerning the Protectorate, which the Commons were now endeavouring to make subordinate to Parliament; and in the general attitude and acts of his opponents he discerned a spirit of hostility, which he believed was intended to embarrass him in his position, and lead him into hopeless antagonism with the House. Moreover, in consequence of all these dissensions the Royalists began to take heart, and to plot the overthrow of the Commonwealth. The moment for decisive action had come, and

as the Protector was only bound to allow Parliament to sit for five months, he interpreted this period to mean five lunar months, and dissolved it accordingly on January 22nd, 1655. In his speech he depicted the dangers which threatened the State, and blamed the House for meddling with matters which had already been settled, enforcing his arguments by a trenchant simile. "If it be my liberty," he said, "to walk abroad in the fields or to take a journey, yet it is not my wisdom to do so when my house is on fire." It was not for the profit of the nation, nor for the common and public good, for members to sit any longer; therefore he dissolved the Parliament.

Cromwell's constitutional aims.

Even while taking this step, Cromwell was honestly anxious to govern in a constitutional manner. He saw how necessary it was that he should have a legislative sanction for his acts, and especially for the levying of taxes; and he assured the House that he lamented the necessity placed upon him for levying taxes without the co-operation of Parliament, but he looked to the nation to understand the cause, and to acquit him of any arbitrary intention.

Government by major-generals.

As soon as the House was dismissed, the necessity for firm government became more and more manifest. Besides the Fifth Monarchy men, the Quakers and the Anabaptists gave the Protector considerable trouble, the latter denouncing him as "the man of sin." There were also plots against his person, and continuous Royalist machinations. In March, 1655, Colonel Penruddocke and Major Grove were beheaded for taking the leading part in an audacious Royalist plot at Salisbury. In order to grapple with his ever-increasing troubles, Cromwell devised a system of government by major-generals. He divided England into ten military districts, and over each set a major-general, with full military powers for suppressing revolts and preserving the peace. As the Royalists were giving the most trouble, 10 per cent. was levied upon their incomes to pay the cost of the pacification of the country. But though military force was used

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firmly and rigorously in maintaining order, nowhere was it allowed to degenerate into license. Martial law was probably never carried out with less of insult, outrage, or cruelty. The Protector's advocates maintained that his government was the best possible government under the circumstances, and certainly it was accompanied by a general liberty of conscience in matters of religion, which would not have been the case with the Presbyterians in power. Cromwell even allowed the Jews to enter the country, and to build a synagogue. But to perfect religious liberty there were two exceptions. The Catholics were harshly treated on the ground that it was necessary to make the government thoroughly Protestant in character, and Episcopalian worship was nominally suppressed because the Common Prayer Book was adjudged to be the rallying-point of disaffection. Toleration in religion was allowed wherever it did not interfere with State authority, but when Cromwell thought the principle dangerous in its operation to the general interests of the nation, he abrogated it.

Cromwell's foreign policy.

At this juncture the Protector was also beset with troubles abroad, but he made them redound to his glory. The massacre of the Protestants in Piedmont caused a thrill of horror throughout England, and Milton wrote his noble sonnet of remonstrance, beginning—

"Avenge, O Lord, Thy slaughtered saints!"

Cromwell resolved on putting a stop to the persecution, and, as we had a treaty with France, he told the French monarch that the continuance of the alliance depended on a cessation of these barbarities. Pressure was accordingly put upon the Duke of Savoy, and the Vaudois secured their religious liberty. War next broke out with Spain, and Cromwell sent Penn and Venables to the West Indies. They failed to take San Domingo, but secured Jamaica, while Blake wrought havoc with pirate vessels in Tunis harbour.

Besides sustaining all this weight of care, the Protector himself was in personal danger. Assassins were lying

in wait for him, and a pamphlet entitled *Killing no Murder* represented his murder as a laudable action. One Sindercomb, a cashiered quartermaster of Levellistic opinions, invented infernal machines and tried to set Whitehall on fire; failing in his diabolical schemes, he took poison and expired in prison. The failure of his plot excited the popular enthusiasm, but the attempts upon Cromwell, combined with his own shattered health, were viewed with deep solicitude.

Attempts against the Protector.

In the midst of these anxieties, and feeling that he needed legislative support in the war with Spain, the Protector resolved to summon another parliament. There was a deficit of £800,000, and taxes must be levied; but Cromwell desired that they should be exacted in a constitutional manner. Writs were therefore issued for a new parliament, which met on September 17th. But before members were allowed to take their seats they were subjected to a thorough sifting by the Council of State, who had the right of testing the elections by the twenty-first article of the *Instrument of Government*. About a hundred members were excluded, it being feared that their Republicanism would hinder the progress of public business. The rejected members, amongst whom were Scott, Haselrig, and Ashley Cooper, protested, but their exclusion was declared lawful by a considerable majority of the rest of the members of the House.

A new Parliament summoned.

Cromwell opened the session in an impassioned speech. He had little difficulty in defending the war with Spain, and he referred with some natural satisfaction to his suppression of domestic tumults. Then he expounded his principles of action, affirming that since the last parliament his practice had been to let all the nation see that persons of all professions of religion who would continue quiet and peaceable should enjoy conscience and liberty, so that religion was not made a pretence for arms and blood. But the Cavalier interest was the badge and character of profaneness, disorder, and wickedness. After reverting to the old attacks upon Puritanism, the Protector went on to denounce the Anabaptists as traitorous apos-

Speech of the Protector.

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tates, destitute of all religion whatsoever. Next he rebuked those who distrusted the future of public freedom. Civil liberty once secured, the safety of religion would follow as a matter of course. There were men who feared, men who did not understand the crisis, and whose indecision rendered them useless. "Could we have carried the work thus far," Cromwell asked, "if we had sat disputing in that manner? To quarrel over trivial points would lead us away from our glorious work. I beseech you to do so no longer. You must know that this cause is mine also, for I am by the voice of the people the supreme magistrate. I know something that might satisfy my conscience if I stood in doubt. Were I seeking any peculiar interest personal to myself, I should curse myself, for God will curse me. I dare be bold with men, not with God." The Protector again asserted that he was defending the cause of religion, which God would not allow to fail, being His own cause, and he recited the words of the Psalm upon which Luther constructed his hymn, "A strong tower is our God."[1]

Exclusion of Members.

When the members repaired to the House on the 18th, persons appointed for that purpose demanded of each representative a certificate from the clerk of the Commonwealth in Chancery that he was duly returned to serve in the present Parliament, and was approved by the Council. Only those producing such a certificate were admitted. Next day, when inquiry was made in the House why many members chosen were not returned to the Parliament, the deputy clerk answered, "Because they are not approved, and have received no certificate of approbation." Then the House resolved that those members not approved must refer their applications to the Council for its approbation. Upon this Haselrig and his associates published their remonstrance. Some were afterwards readmitted to the House.

[1] The Journals did not contain this remarkable speech. It was first printed in Rutt's *Diary of Thomas Burton*; but Carlyle has since published it in full, emending its phraseology where defective.

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Parliament again declared void the title of the Stuart family to the throne, and annulled the titles borne by the sons of Charles I. It next approved a bill for the personal safety of the Lord Protector, the measure being also described as one for the maintenance of peace and the safety of the nation. The war against Spain was approved as necessary and just, and as being undertaken "for the good of the people of this Commonwealth." A stroke of good fortune for Cromwell's policy happened at this time. One of Blake's officers, Captain Stayner, had seized eight galleons from the Indies, bound for Spain with a freight of silver. The treasure was secured and despatched to England, and the galleons were destroyed. The silver thus seized was valued at upwards of a million sterling, and it not only relieved Oliver's exchequer, but fanned the public zeal for the war. The military and civil parties in the House, as we may term them, quarrelled over the imposition of taxes, but ultimately a subsidy of £400,000 was voted, towards which all parties were to contribute equally.

A stroke of fortune.

The question of kingship.

On January 19th, 1657, the House resolved to wait upon the Lord Protector to congratulate him upon his deliverance from the wicked design against his life. This referred to the Sindercomb conspiracy, the failure of which was declared to be the saving of the reformed religion as well as of Cromwell himself. It was during the debate on the motion for congratulating the Protector that we have the first hint of the project for making Cromwell king. Mr. John Ashe, member for Somerset, rose and said, "I would have something else added, which in my opinion would tend very much to the preservation of himself and us, and to the quieting of all the designs of our enemies: 'that his Highness would be pleased to *take upon him the government according to the ancient Constitution.*'" The military party resented this, and Luke Robinson (who was actually the first to magnify Charles II. in 1660) retorted excitedly, "I understand not what that gentleman's motion means who talks of an old Constitution. The old Constitution is

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Charles Stuart's interest. I hope we are not calling him in again. This gentleman would have his Highness to be Charles Stuart's viceroy, or some such thing." But the monarchical idea had evidently struck root, for the speaker who followed next, George Downing, member for Carlisle, said, "Those governments are best which are upon proof and long experience of our ancestors. I cannot propound a better expedient for the preservation both of his Highness and the people, than by establishing the government upon the old and tried foundation." The debate was carried on warmly, but closed without any definite issue. Of the dignity and status of the Protector, however, more was shortly to be heard.

A religious fanatic.

A case now occurred which illustrated the necessity for some change in the powers of the Lord Protector. One James Naylor, a fanatical Anabaptist, styled by the diaries of the time "The Quakers' Apostle," had allowed himself to be worshipped as the Christ at Bristol and in the west of England. His case was taken up in parliament with great vehemence, and week after week was wasted upon its discussion. Ultimately he was ordered to be whipped, branded, bored through the tongue, and sent to pick oakum and live on bread and water. Cromwell protested against this sentence, but had no legal powers to annul it.

Parliament and the Protector.

The project for making Cromwell king was formally brought before Parliament on February 23rd, 1657. Alderman Sir Christopher Pack, one of the members for London, after taking the House to witness of the unsettled state of the nation and the discomposure of men's minds, with the ill aspect these had upon foreign princes, trade, and commerce, moved that the Lord Protector be desired to assume the title of king as the best-known and most agreeable kind of government to the English people. He then presented to the Speaker a paper or address for the settlement of the nation, and of liberty and property. Pack's motion occasioned a great debate, but it was resolved in the affirmative by 144 to 54. Next day, by 100 votes to 44, it was decided to discuss the articles of

the remonstrance seriatim. The military party, with Lambert at their head, were very wroth, and waited upon Cromwell, appealing to him to maintain the existing government. He replied, pointing out that the supreme authority had no control over the decrees of Parliament, and, citing Naylor's case, reminded them that a similar judgment might some day be passed upon them, seeing that they were distasteful to the nation. At the same time he did not directly approve the proposed scheme, for he could not precipitate a conflict between the military and civil sections.

The Petition and Advice.

But Parliament went forward with the scheme, which shaped itself into an instrument known as the Humble Petition and Advice. It consisted of eighteen articles, which may be said to form the new charter of the Commonwealth. On March 3rd it was resolved, "That your Highness will be pleased during your lifetime to appoint and declare the person who shall immediately after your death succeed you in the government of these nations." Two days later it was resolved, "That your Highness will for the future be pleased to call Parliaments consisting of two Houses, in such manner and way as shall be more particularly afterwards agreed upon and declared in this remonstrance, once in three years at farthest or oftener as the affairs of the nation shall require, that being your great council, and in whose affection and advice yourself and this people will be most safe and happy." The Protector was to be allowed to nominate the members of the Second Chamber, subject to the approval of Parliament, and he was to be released from the control of the Council of State. A fixed sum was granted for the maintenance of the army and navy, which was a most important point gained for the Protector. A confession of faith might be introduced only upon the joint consent of the Protector and Parliament, but all coercive measures and penal legislation against Dissenters were to be prohibited, except where there was danger to the public peace. But Papists and Episcopalians were again to be excluded from the religious

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toleration. Finally, after many bitter and angry debates, the House resolved on March 25th, by 123 votes to 62, "That the Protector be requested to assume the name, style, title, dignity, and office of King of England, Scotland, and Ireland, and to exercise the same according to the laws of these nations."

Cromwell declines the Crown.

The scheme was submitted to Cromwell, who took time to consider. On April 4th he returned an indefinite answer. While declaring his approval of the plan as conducive to religious and civil liberty, and while sensible of the honour done him by the offer of a title which contained all that the world thought desirable, he yet could not discover that his duty to God and to Parliament required him to accept the office of king. Conferences were now arranged in which Whitelocke, Lenthall, and others took part, and Parliament endeavoured to remove Cromwell's scruples as to the title, agreeing to consider his objections to some of the details of the new Constitution. On May 1st the committee appointed by the House in this matter laid the amended scheme before the Protector. He reflected again for a week, during which period his family pressed him to accept the title. They were not likely to succeed, however, when all the efforts of eminent constitutional lawyers had failed to convince him of the necessity for his assumption of the title. In giving his final answer on May 8th, he said: "I think the Act of Government doth consist of very excellent parts in all but that one thing of the title as to me," and again: "I cannot undertake this government with the title of king." On a previous occasion he had said that he was half inclined to believe God had blasted the title as well as the family which had borne it. He contemptuously described the title as "a feather in the hat," and the crown as "a shining bauble for crowds to gaze at or kneel to." The army, as already stated, were strongly opposed to the project, and Ludlow says that a petition presented to Parliament from many officers against the restoration of monarchy was the sole cause of Cromwell's final refusal. The navy, too, it

was affirmed, would have immediately mutinied against him.

His powers augmented.

The Protector's delay had one excellent effect. It did not cause Parliament to abandon the whole scheme of government, as it would have done if Cromwell had unconditionally rejected the title of king at the outset. The House still determined to go on with its work, and while consenting that the kingly title should be dropped, on May 22nd it resolved that the Lord Protector of the Commonwealth should undertake the office of supreme magistrate in the same, and carry on the government in accordance with the provisions of the proposed scheme so far as it extended, and in other respects according to the laws of the three nations, so much and no more. To the new Constitution as thus defined Cromwell assented, and his powers under it were far greater than those conferred by the *Instrument of Government*. He had the right to appoint his own successor, was empowered to nominate the members of the House of Lords, and received a fixed grant for the army and navy which rendered him largely independent of Parliamentary subsidies. There was also a corresponding increase in his state, authority, and dignity, so that he was a monarch in all but the name. While the Protector pledged himself to maintain the established rights and privileges of the people, and to rule according to the laws to the best of his knowledge and ability, the Commons swore to maintain the rights and privileges of the people, to be faithful to the Lord Protector, and to undertake nothing against his government and lawful authority. The new Constitution was inaugurated with much ceremony on June 26th. Whereas at his previous installation Cromwell had been clothed in plain black velvet, he was now robed in purple and ermine, and presented with a golden sceptre. Great dignitaries of state went before the farmer of St. Ives as he entered Westminster Hall ; the Earl of Warwick bore the sword of the Commonwealth, and the Lord Mayor the sword of the City. The Speaker presented to him among the

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insignia of sovereignty not only the sceptre and sword, but a magnificent Bible, upon which the Protector took the oath of government, and swore to maintain the Protestant religion.

A new House of Lords.

From this time until his death Cromwell was practically sovereign of England. But the difficulties of government seemed to increase daily, and many of his Republican friends fell away from him. In order to strengthen his position constitutionally he resolved upon the creation of a House of Lords. Among peers already existing he summoned Lords Mulgrave, Warwick, Manchester, Saye and Sele, Fauconberg, Howard, Wharton, Cassilis, Lisle, and Broghill. The new peers included Fleetwood, Desborough, Whitelocke, Skippon, Haselrig, St. John, Pierpoint, Monk, and Lenthall. The House, exclusive of the judges, was to number sixty-three, and although there were a few men, like Hewson, who had risen from the lowest rank in the social scale, and others who were relatives of the Protector, the great majority of the peers were either men of learning, rank, or ability in war or statesmanship. A few of the old peers at first attended, but afterwards declined to do so; and of the Commoners Haselrig showed his contempt for the new House by taking his seat in the House of Commons as member for Leicester.

Difficulties between the Houses.

But it mattered little whether the Lords met or not; Cromwell's real difficulty lay with the Commons. Parliament assembled on January 20th, 1658. The third article of the *Petition and Advice* was carried out, by which no persons legally chosen as members of the House were to be excluded. Consequently this opened the door to about a hundred of the Protector's inveterate enemies, who were now highly extolled for their patriotism and fidelity to the Commonwealth. On the 22nd the Lords sent a message to the Commons respecting a fast day, but the Lower House, unwilling to acknowledge the existence of the Upper, merely passed a resolution, by 75 to 51 votes, that "the House of Commons will send an answer by its own messenger." Haselrig ap-

peared on the 25th to take the oath, and was permitted to do so after some delay, this act furnishing additional evidence that the Commons meant to ignore the House of Lords, to which Haselrig had been summoned. A manifesto from Cromwell now intimated that the Lord Protector "had sworn to govern according to the laws as at present established. He would keep his oath. His hope is that neither pride nor envy will destroy a union so full of promise. He will serve the Commonwealth, but on the principles laid down in the Articles of Government."

Attitude of the Commons.

The crisis had become acute, however. Parliament fixed its attention exclusively on the popular liberties, while Cromwell was busied with the maintenance of the power of the Commonwealth abroad and the preservation of peace at home. A deputation of members waited upon the Protector to request that his speech should be printed, when he gave them to understand that he was bound by his oath to maintain the privileges of both Houses, and that he intended to lay the estimates of expenditure before both. This determination displeased the Commons, who complained that they were called upon to acknowledge a House which had been abolished, the new House, too, being one which, unlike its predecessors, did not represent the landed interest of England. They denounced the right of veto in any other authority, for to the Commons' decrees rightfully belonged the force of law. One member exclaimed, "What have we fought for, if not for the right of the people to give laws to itself? For this we have shed our blood." Some efforts, nevertheless, were made to establish a *modus vivendi*.

A new crisis.

The Lords sent a message proposing a law for the removal of delinquents and priests to a distance of twenty miles from the capital, but the Commons stigmatised this as a direct attack upon the rights of the free people of England, which it was the duty of Parliament to maintain. The Lower House also contemplated certain decrees hostile to the Protector, and, it is said, even thought of associating with him a commander of the forces

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who should be answerable to Parliament. The Commons cleverly threw the whole contest into one between Parliament and people and Cromwell and authority, though the Protector was equally anxious from his point of view to govern constitutionally. An address was projected by Parliament demanding that for the future no officer should be dismissed from the army without consulting the council of war, that the local militia should be placed in trustworthy hands, and that one House of Parliament only should be recognised as the supreme judicature of the nation. These proposals certainly contravened the powers given to Cromwell as Lord Protector. He therefore resolved to circumvent them.

Cromwell dissolves Parliament.

Going down to Westminster on February 4th, he entered the Lords' Chamber, and was asked by Fiennes and Fleetwood what he meant to do. "I mean to dissolve this House," he replied; and when they remonstrated he added vehemently, "By the living God, I will dissolve it!" The Commons were still at the time discussing the recognition of the House of Lords, and while the debate was in progress Black Rod appeared at the door. He announced that the Lord Protector desired to speak with both Houses in the Upper Chamber, and the Commons accordingly proceeded thither. Addressing them, Cromwell said that it had been no wish of his to accept the form of government pressed upon him last session, for, if he were not prevented by necessity, he would prefer to sit by the side of a wood and tend cattle; but, after thrusting this form upon him, they now disputed their obligations, and he also therefore felt himself released. The Protector thus continued: "I did tell you I would not undertake such a government as this unless there were some other persons who might interpose between me and the House of Commons, who had the power to prevent tumultuary and popular spirits; and it was granted I should name another House. I named it of men that shall meet you wheresoever you go, and shake hands with you, and tell

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BOROUGH OF LEWISHAM
MANOR HOUSE

you it is not titles nor party that they value, but a Christian and an English interest. Having proceeded upon these terms, and finding such a spirit as is too predominant, everything being too high or too low, I thought I had been doing my duty, and that it would have satisfied you. But, if everything must be too high or too low, you are not to be satisfied. If this be the end of your sitting, and this be your carriage, I think it high time that an end be put to your sitting, and I do dissolve this parliament, and let God judge between me and you."

He governs alone.

With this dissolution ended the parliamentary government of Cromwell. It is true that he resolved to summon a new Parliament, and a commission was appointed to consider how it should be composed; but it never met, and for the remaining eight months of his life the Protector ruled alone. In its results that rule was glorious. In April came the news that his forces had been victorious over those of the King of Spain in Jamaica; about midsummer Dunkirk surrendered to the united forces of France and England; and the town itself passed into the hands of the Protector exactly a century after Calais had been finally lost to the British crown.

Death of the Protector.

In the midst of domestic broils and foreign conflicts, Cromwell did not forget that Protestant faith which had been his beacon through life, but made one more noble and effective interposition on behalf of the persecuted Piedmontese. Then, with grief at his heart, partly for the future of England and partly the result of the loss of his beloved daughter Elizabeth, he gathered his robes about him, and, with a prayer for the people on his lips, he went to his eternal rest. He died on September 3rd, 1658, the anniversary of the two great victories of Dunbar and Worcester, and one which during his Protectorate had been annually observed as a day of general thanksgiving.

His character and influence.

For a long period after his death, the name of Cromwell was execrated. It was the fashion to describe

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him as cruel, bigoted, bloodthirsty, and ambitious, and as one who used religion merely as a cloak for the grossest hypocrisy. This judgment has been swept away by the later researches of historians and biographers. We are not dependent alone upon the vindication of Cromwell by Carlyle, but writers eminent for their judicial fairness and freedom from bias, like Gneist, Ranke, and Gardiner, reject the utterances of rancorous prejudice respecting this great man, and he is now seen to have been a ruler who with many of the defects of human nature united some of its best and noblest qualities. He was less of a religious bigot than his contemporaries, and he only took to the sword as a dire necessity. Considering his rule from the constitutional aspect, we agree to the full with Gneist that "only an entire misconception of the real state of affairs would ascribe the impossibility of the Protector's arriving at an understanding with a Parliament to ambition or thirst for power on the part of the Protector; for it was really due to the internal decomposition of all those cohesive elements by which the Parliamentary constitution was organically welded together." Cromwell never used his power for the love of it, like a Napoleon or a Richelieu; but had an honest desire to govern with and through the people. His Parliaments failed in spite of his earnest efforts to bring them into harmony with the will of the nation, and to combine the executive authority vested in himself with the legitimate exercise of fiscal and legislative powers by the people through its representatives. If he had surrendered power, anarchy must in his judgment have resulted, and he stepped into the breach, as he firmly believed, to save England. There is not, in all our long line of hereditary sovereigns, his equal as regards those natural qualities which dignify a man, and justly entitle him to be called great.

CHAPTER IV.

CLOSE OF THE COMMONWEALTH.

The government of England.

By the sheer force of his commanding nature and energy, Cromwell had overcome or postponed those Parliamentary difficulties which now, upon his death, inevitably pressed forward for a solution. The natural government of England had for centuries been one of King, Lords, and Commons ; and whether the title of King were preserved or not, it was the prevalent belief that the nation could not long go on without reverting to these three essential elements of government. There must be a supreme head, and there must be the two Houses of Parliament. This feeling was not confined to the Royalists alone.

Richard Cromwell Protector.

Cromwell had formed high ideals of government, yet he had been unable to carry them out. With the strong man removed, what chance was there for his successor to accomplish that which he had failed to achieve ? Things had come to such a pass that the absolutism of the army must continue, with or without a nominal head, or the Stuarts must be restored. Oliver had named his third son, Richard, as his successor, and he was accordingly accepted and proclaimed by the Council. The new Protector was shortly to realise that he was only the servant of the army. Fleetwood and Desborough, Oliver Cromwell's son-in-law and brother-in-law, asserted the claims of the army, while the lawyers and statesmen maintained the authority of the Protector. Richard

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summoned a new parliament. It embraced both Houses, and the elections to the Lower Chamber were conducted in the old fashion by summoning again the small boroughs, which had previously been excluded, and with a strict return to the old parliamentary observances.

Opening of Parliament.

Parliament assembled on January 27th, 1659, and Richard went to Westminster to open it, observing the same state and solemnity which his father had done. The Commons were summoned to the House of Lords by the Black Rod, and the Protector delivered his speech from the throne. His address is described as being, "beyond expectation, a very handsome speech." After a warm eulogy upon his father, Richard pledged himself to govern with the assistance and counsel of Parliament, which he had called together out of the three nations, now united into a single Commonwealth. It was not only agreeable to his trust, but to his principles, to govern England by the advice of his two Houses of Parliament.

Party dissensions.

But the course of government was not to run smoothly. The House of Commons was composed chiefly of three sections: Cromwellians, Presbyterians, and Republicans. The Republicans condemned the Constitution, which had been set up by a mutilated Parliament and gave the Protector too much power. Debates at once arose upon the Protector's Recognition Bill. Sir Henry Vane, who represented a considerable number of members, desired to retain the Protector at the head of the Commonwealth as President, but with powers strictly defined. The House of Commons, composed as it was of the representatives of the people, must be the chief depositary of power. Theoretically Vane's party held a strong position, but to carry their ideas into effect might have involved another civil war. The sixty members from Ireland and Scotland, combined with their English supporters, gave the Government a majority in the divisions. Richard Cromwell was recognised as Lord Protector and supreme magistrate of the Commonwealth by 191 to 168 votes. The House of Commons was very fully attended at this period, and on March 8th there was the greatest number present, as

well as the nearest division, recorded in the history of this Parliament. A motion that "It is not intended to exclude such peers as have been faithful to the Parliament from their privilege of being duly summoned to be members of this House," was carried in the affirmative by 195 to 188 votes, or a majority of 7 only in a House of 383 members.

Army troubles.

But while the Protector's government secured majorities in the House, trouble arose with the army. Early in April the officers addressed a long petition to Richard complaining that their rights had been slighted, and the good old cause which involved the liberty of the nation neglected. This petition, set on foot by Desborough and Fleetwood, was the beginning of the Protector's fall.

The House of Commons and the officers.

Richard laid the address of the officers before the House of Commons, and on April 18th some important votes were taken upon it. While the officers found considerable sympathy in the House of Lords, the Lower House regarded the attitude of the army as dangerous, declaring that Parliament would fare ill if it could no longer order the military to return to their posts. Accordingly, the Commons passed, by 163 to 87 votes, a resolution, "That, during the sitting of the Parliament, there shall be no council-general or meetings of the officers of the army without the direction, leave, and authority of the Lord Protector and both Houses of Parliament." It was also resolved, "That no person shall have or continue any command or trust in any of the navies of England, Scotland, or Ireland, or any of the dominions or territories thereunto belonging, who shall refuse to subscribe that he will not disturb nor interrupt the free meetings in Parliament of any the members of either House of Parliament, or the freedom in their debates or counsels." The concurrence of the Upper House was desired in these resolutions. Two days later a majority of the House of Commons declared in favour of the civil power, and against the appointment of an army head in addition to the Protector. The officers saw that the above resolutions cut at the very root of their

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power. They consequently hastened to the Protector, and demanded the dissolution of the Parliament.

Richard dissolves Parliament.

Left with a mere handful of supporters, Richard agreed to dissolve Parliament, which was done by proclamation issued on the 22nd. When members endeavoured to return to the House they were turned back by the troops.

The Long Parliament recalled.

With this step the Protector's shadowy authority practically passed away. The leaders of the army met at Wallingford House, and, under the instigation of Major-General Lambert, who enjoyed great reputation both with the army and the Republican members of the House of Commons, drew up a declaration in favour of recalling the Long Parliament. Although Cromwell had expelled this Parliament, it was held that it could not be dissolved save with the consent of the members, and that it still preserved its rights of government. Some of the officers, however, were in favour of governing by the sword pure and simple; but Lambert and his friends, desiring to preserve the form of civil administration, waited upon the former Speaker Lenthall (now Master of the Rolls) and other prominent members of the ejected Parliament with the officers' declaration. Next day forty-two members, with Lenthall at their head, proceeded to St. Stephen's Chapel, the mace being borne before them. Other members gradually joined them, until the "Rump Parliament," as the restored House was called, numbered ninety-one. The new, or rather old, House issued a declaration promising to give the Commonwealth such a constitution that not only the property, but the personal and religious liberty, of each man should be secured without the rule of a single person, without a king, and without a house of peers.

Abdication of the Protector.

A temporary Committee of Safety was appointed, including Fleetwood, Haselrig, Vane, and Ludlow. It had full power to take especial and effectual care to preserve the peace and safety of the Commonwealth; and all officers, soldiers, and ministers of justice were required to give obedience to its orders. The committee was to

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continue for the space of eight days, and no longer. The House of Commons ordered the Great Seal of the Protector to be broken up, as that of the King had been; and the seal of the Commonwealth again came into use, the year 1659 being styled the third year of restored liberty. Richard Cromwell had been urged to meet force by force when the movement against him first began but he replied, "I will not have a drop of blood spilt for the preservation of my greatness, which is a burden to me." He now signed a formal abdication of his claims, in return for which Parliament undertook to discharge his debts. His brother Henry, who as Lord Lieutenant had been governing Ireland with justice and moderation, was also obliged to submit to the Parliamentary party, which superseded him. With the Cromwells also fell those who were connected with them either by ties of relationship or as advisers and prominent supporters.

New Council of State.

On May 14th the Commons elected a new Council of State. It consisted of 31 members, 16 civilians and 15 officers, and included Haselrig, Vane, Ludlow, Fleetwood, Scott, Fairfax, Lambert, Bradshaw, Ashley Cooper, St. John, and Whitelocke. An address drawn up at Wallingford House was presented by Lambert, on behalf of the army, to the House of Commons, and acknowledged by the Speaker. This address demanded the recognition of the Republican Constitution as a means of securing personal liberty and the rights of property; the establishment of a system of justice neither oppressive nor vexatious, but which should protect the people; religious freedom for the various Christian sects, with the exception of Papists and Prelatists; the reconstitution of the universities and of the liturgy in accordance with the strictest religious views; the appointment to State magistracies of men of tried religious and Republican views; the unconditional exclusion of all who adhered to the royal cause; indemnity for all who had taken part in the acts of the Government since the dissolution of the Long Parliament, and the confirmation of these acts; and, finally, the establishment of a constitution

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in which the legislative authority should be vested in the people as represented by two Houses, and the executive in a Council of State composed of competent and trustworthy persons devoted to the "good old cause."

Army demands conceded.

This comprehensive document was laid before the House on the day preceding that on which the Council of State was elected, but it was not debated for a week afterwards. On May 21st every article in the petition was agreed to except the ninth, thirteenth, fourteenth, and fifteenth, which dealt with the Royalists, the election of a new Parliament, the Council of State, and the debts of the late Protector. These points were referred to a grand committee of the whole House. But the Commons at once, and unanimously, accepted the clauses relating to the Republican Constitution, the administration of justice, the Church, and the universities. It was further decided to entrust posts of confidence and authority only to proved Republicans, while Parliament also took the important step of ordering the payments to the army and raising the daily pay of the common soldiers. To achieve this it was ready even to sell the palace of Whitehall and Somerset House. A commission was appointed to inquire into the state of the revenue; the existing imposts were continued, and an order was made to collect all customs, excise duties, and monthly taxes, which still remained unpaid. It was enacted that the commissions of all officers in the army and navy should be renewed, and signed by the Speaker in the name of the Commonwealth; and the whole army was placed under the orders and authority of Parliament. Fleetwood was appointed lieutenant-general and commander-in-chief of all the forces in England and Scotland, but the title of general, borne by Essex and Cromwell, was withheld from him. The army were not well pleased with these provisions, but it was not deemed advisable openly to resent them, and Fleetwood and Lambert, like the other officers, received their commissions from the Speaker, with the intimation that the House "expected faithfulness and obedience to the Parliament and Commonwealth."

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Renewed conflict.

On June 4th the House of Commons resolved, "That the continuance of this Parliament shall not exceed May 7th, 1660." This decision gave considerable satisfaction, and for the moment things generally presented an aspect of stability for the Commonwealth. Several questions, however, had only been postponed, and by the middle of July the army discovered that Parliament was resolved to keep a tight rein over it. The House passed a Bill of Indemnity, but while it accepted the judicial acts transacted since the dissolution of the Long Parliament, it excepted those military ones which the officers declared were directed to the maintenance of peace and order. This left an open sore. The House was undoubtedly within its rights in refusing to condone the military violence from which it had itself suffered, but its attitude once more exasperated the army.

Royalist conspiracy.

An immediate collision was only averted by a new and common danger. Charles Stuart and his Court were at Brussels, eagerly watching events in England. Royalist negotiations were opened up with the Presbyterians, and amongst those who pledged themselves to the royal cause were Fairfax, Manchester, Denbigh, Waller, Sir George Booth, and Sir Ashley Cooper. Lord Fauconberg, the son-in-law of Oliver Cromwell, undertook to deal with his relatives Richard and Henry Cromwell. A powerful combination of parties disaffected towards the Government was soon made manifest. The conspiracy began to assume an active shape in the middle of 1659, when several risings of the Royalists and their new partisans were projected. Sir George Booth raised the royal standard in Cheshire, but the revolt was suppressed at Winnington Bridge, and all the other movements failed, either through the over-prudence of the Royalists themselves or the vigilant activity of the Government.

Fresh army movement.

Parliament was rendered all the stronger by Lambert's suppression of the Royalist rising in the north; and it now issued a fresh ordinance compelling every one to swear never to recognise Charles Stuart or any of the

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descendants of King James, and to oppose all attempts whatsoever for the restoration of the House of Lords. But the old feud broke out again. The army rebelled against the idea of the military authority being vested in the Commons, with the Speaker as their mouthpiece and agent, and they dreaded lest the House should claim and exercise the power of disbanding the soldiery when it thought fit. Acting under the influence of Lambert, the officers presented a petition to Parliament on October 6th complaining of the disfavour shown them, solemnly avowing their attachment to Republicanism, and demanding the punishment of those malicious persons who had cast suspicion upon them. Further, they insisted upon the appointment of an acknowledged head as the sole means of preventing disturbance in the army; stipulated that no one was to be admitted into the army unless presented by a committee to be appointed for the purpose, and that no one, whether officer or soldier, was to be discharged except by his own consent, or without having been formally tried and condemned by a court-martial. The army thus sought to relegate Parliament to the position of a paymaster, but to take from it its directing and controlling powers.

Parliament claims supreme authority.

But the House of Commons, mainly under the guidance of Haselrig, joined issue with the officers. It discussed their petition, but passed adverse votes. It declared its readiness to extend marks of its favour to the officers, but gave no definite answer to the right of petition claimed by the army. Besides claiming for itself the supreme military control, Parliament went further on October 11th and 12th, declaring that all acts passed between the violent dissolution of Parliament in 1653 and the day on which it reassembled in 1659, whether issued by a single person or by his Privy Council, or by a convention claiming Parliamentary powers, were to be considered null and void unless confirmed by the present Parliament. This resolution not only included in its purview all that Cromwell had done, but the act of union with Scotland, the government of Ireland, and all the judicial and other

proceedings of six important years. The House next prohibited every attempt in the future to raise money directly or otherwise, by customs, excise, or imposts, unless approved by Parliament.

Leading officers cashiered.

All these votes were aimed at the independence of the army, and the House passed on to an even more intemperate vote still. Lambert, Desborough, and seven other officers having signed a despatch which accompanied an army petition sent to a regiment in the field for signature, Parliament declared this to be an act of disobedience, cancelled the commissions of Lambert, Desborough, and the other offending officers, and discharged them from all military employment. Seven commissioners, including Haselrig—the prime mover in these events—were entrusted with the government of the army.

Expulsion of the Parliament.

On the next day, October 13th, Lambert expelled the Parliament. Drawing up his forces in and about Westminster, he obstructed all passages, both by land and water, placed and continued guards upon and about the doors of the Parliament House, and so interrupted the members from coming to the House. When the Speaker appeared in his coach, the horses were turned back. "Do you not know me?" said Lenthall. "If you had been with us at Winnington Bridge," the soldiers answered, "we should have known you." He was then very civilly conducted home, and other members were intercepted in like manner.

Committee of Safety formed.

The army thus recovered the supreme authority, and consultations were held as to how the government should be remodelled. Fleetwood was declared commander-in-chief, and messengers were despatched to the armies in Scotland and Ireland to acquaint them with what had been done. A Committee of Safety was appointed, consisting of twenty-three persons, and on October 28th it met, and issued a declaration from the army, advancing the grounds and reasons for their late proceedings. But about this time came a letter from General Monk, then at Edinburgh, to the officers of the army, declaring his dissatisfaction and that of those who were with him on

CHAP. IV. the late turn of affairs. This was an ominous sign that all was not well with the Commonwealth.

Close of the Commonwealth.

General Monk.

General George Monk, who now comes into prominence in the history of Parliament, was the second son of a Devonshire baronet. Born in 1608, he early entered the army as a volunteer. After seeing much active service, in 1646 he was placed in command of the English forces in Ulster, but was obliged to conclude a treaty with the rebels under Owen Roe O'Neil. Parliament censured him for this, though the Independent leaders had advised the treaty. Cromwell, however, had discerned a good soldier in Monk, and in 1650 he appointed him Lieutenant-General of Artillery to the Parliamentary forces in Scotland. Monk exhibited conspicuous bravery at Dunbar, and after Cromwell's departure completed the reduction of Scotland, though not without great severity. In the Dutch war of 1653, as one of the admirals of the fleet, he had a share in the victory off the Texel. Returning to Scotland in 1654, he remained there till the death of Oliver Cromwell.

His letter to the Speaker

In addition to his letter of dissatisfaction to the officers, Monk sent a communication of a different character to Speaker Lenthall, dated Edinburgh, October 20th, in which he affirmed his resolution as a true Englishman to stand by and assert the liberty and authority of Parliament. This determination to adhere to the excluded Parliament seriously discomposed the Committee of Safety, who now cast about to prevent the evil consequences of the impending storm. They endeavoured to gain Monk over to their schemes of government. Monk himself sent commissioners to conclude a treaty with the Committee of Safety, but refused to ratify the agreement arrived at, and then desired to open fresh negotiations at Newcastle. Meanwhile the nation fell into complete anarchy, and the refusal to pay taxes reduced the army to the direst necessities. Fleetwood, the commander-in-chief, was at his wits' end, and now manifested singular incompetency.

The Long Parliament was for a third time restored on

December 26th. Lenthall, invited thereto by the officers, again assumed authority and summoned the members, who had twice been ignominiously expelled. Few cared to attend, however, while others who were eager to do so, like Prynne, were refused admission. As soon as it had assembled, the House proceeded to repeal the act against the payment of excise and customs; it also appointed commissioners for assigning quarters to the army; and, without taking any notice of Lambert, sent orders to the forces under his command immediately to repair to the posts assigned to them. It then thanked Colonel Ingoldsby for taking and securing Windsor Castle for the Parliament. On the last day of the year a new Council of State was elected, consisting of twenty-one members of the House of Commons and ten who were not of the House. On January 16th, 1660, Monk was thanked for his great services, and a grant of £1,000 a year on land of inheritance was settled upon him and his heirs.

The Long Parliament restored.

Meanwhile, Monk was on his march southwards. He and the Parliament were waiting upon each other. The General entered London on February 3rd. He declined to take an oath of abjuration of the House of Stuart, wishful first to know the grounds on which it was tendered to him. On the 6th he attended Parliament in order to be thanked for his services. Three days later he received orders to march into the City, and to seize the persons most obnoxious to Parliament.

Monk's movements.

Having reduced the City to order, Monk immediately began to reflect on the question whether the Rump Parliament could continue to make laws for the country, and this he decided in the negative. He called a council of his officers on the 10th, and obtained their sanction to a letter which he had written to Parliament. In this letter he reproached the House as well with the new cabals which they had formed with Vane and Lambert, as with the encouragement given to a fanatical petition presented by Praise-God Barebone; and he required the members in the name of the citizens, soldiers, and the whole

He demands a new Parliament.

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Commonwealth, to issue writs within a week for the filling of their House, and to fix the time for their own dissolution and the assembling of a new Parliament. He then entered into a compact with the City. The populace were wild with enthusiasm, and praises of the General were everywhere mingled with denunciations of the Parliament.

Return of the excluded members.

Monk's declaration for a free Parliament was an important step, for it brought within view a solution of some kind of the existing difficulties. The moribund House saw the full significance of the General's action, and endeavoured to treat with him, but in vain. While still ostensibly supporting Republican principles of government, Monk was already moving in the direction of the restoration of Charles Stuart. On February 21st, as the writs for fresh elections had not been issued, another means, and this time an effectual one, was taken for checkmating the House. On the invitation of the General, the excluded members went down to the House, and, not finding any obstruction, took their seats. They were soon found to be in the majority, for most of the Independents had left the place. The restored members first repealed all the ordinances by which they had been excluded, gave Sir George Booth and his party their liberty and estates, and renewed Monk's commission with enlarged powers. The General read a declaration to the House on the 21st, pointing out the necessity for providing for the army and navy, for electing a new Council of State, and for effecting a legal dissolution of the Parliament. On the 24th the new Council was elected; Monk was constituted captain-general and commander-in-chief of all the land forces in England, Scotland, and Ireland; and Mr. Annesley, Mr. Prynne, and Mr. Solicitor-General were directed to prepare a bill for the dissolution of the existing Parliament.

The Restoration in view.

By other resolutions Parliament smoothed the way for the restoration which Monk had resolved upon, and was now cautiously feeling his way to achieve. An order of the House of March 5th provided that the Solemn League

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and Covenant should be read in churches. On the 13th the House expunged all that had appeared on its journals against the kingly government and the House of Lords. This was almost equivalent to a declaration in favour of Charles, and indeed many outside began to speak confidently of his return. In the House itself, Prynne was the first who spoke boldly and openly for the King, declaring his opinion that Parliament was dissolved by the death of Charles I. Several agreed with him, and at a sitting towards the close of March Sir Harbottle Grimstone explicitly advocated the restoration of Charles II. Monk was the forerunner and the completer of the Restoration, but the intermediate stages were taken by Parliament, the General waiting until the project was ripe for action because he was not sure of the army.

The Long Parliament finally dissolved.

The Long Parliament extinguished itself on March 16th, 1660. Having carried through a bill conferring £20,000 on General Monk for his eminent services, it passed an act for dissolving the Parliament begun and holden at Westminster November 3rd, 1640, and for the calling and holding of a Parliament at Westminster on April 25th, 1660. The Long Parliament was accordingly dissolved on this day, March 16th, and April 6th was set apart as a day of public fasting and humiliation. Thus perished a Parliament which had seen many and unparalleled vicissitudes. It was unhonoured in its fall, yet, though mutilated and effete in its later years, it achieved lasting honour for two great reforms which it secured at an earlier period. These were the abolition of the extraordinary courts, including the Star Chamber, and the overthrow of the King's claim to levy taxes without the consent of Parliament. Its institution of an excise in 1643 and its abolition of feudal tenures in 1646 were likewise beneficial as well as lasting measures.

Close of the Commonwealth.

With the dissolution of the Long Parliament is practically involved the end of the Commonwealth, although a brief interregnum ensued before the Restoration. Any effort, however, to prolong a Republican form of government would have been futile, for a strong feeling in

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favour of the recall of Charles, as the best settlement for England, pervaded almost all classes before the meeting of what is known as the Convention Parliament. Military and Parliamentary rule had become alike distasteful and obnoxious, and the nation was prepared to welcome the King, though as yet it had not formulated its desires.

BOOK VIII.

PARLIAMENT UNDER THE RESTORATION.

CHAPTER I.

THE CONVENTION PARLIAMENT.

Monk's negotiations.

The negotiations of Monk with the exiled Charles were of the most secret character, and the General was so careful and dilatory, before absolutely committing himself to the royal cause, that he was very nearly losing the credit to which he was entitled in the matter of the King's restoration. Monk's proposals were conveyed to Charles through John Grenville, a distinguished Cavalier. But the propositions were only given verbally to Grenville; for the General, even at this advanced stage, declined to commit anything to writing.

The proposals accepted.

The Prince, acting under the advice of Edward Hyde, decided to accept Monk's proposals, as well as a petition which had been presented by the city of London to the Council of State. Practically the same ground was covered by both, and the points included an amnesty and toleration and a confirmation of the sales of the Crown estates. Speaker Lenthall had suggested that the proposals should proceed from the King himself, as a free act of grace, and that they should be confirmed by a free Parliament. This suggestion was accepted, and Charles dated his propositions from Breda, to which town he was hastening when he despatched Grenville to England.

Declaration of Breda.

The manifesto known as the Declaration of Breda, which was thus sent by the King to both Houses of the

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Convention Parliament, was dated April 14th, 1660. It granted a free and general pardon to all "who within forty days after the publishing hereof shall lay hold upon this our grace and favour, and shall by any public act declare their doing so, save all such persons as Parliament should except." An amnesty was also granted for all political offences committed during the Civil War and the subsequent interregnum. The King further promised to rely on the advice and assistance of a free Parliament; and declared a liberty to tender consciences, so "that no man shall be disquieted or called in question for differences of opinion in matters of religion." Further, an undertaking was given that no inquiry should be made into the titles of lands acquired under the Commonwealth, and that the arrears due to Monk's officers and soldiers should be paid.

The Elections.

The elections to the new Parliament had now been completed, and many members were returned who had borne arms against the Commonwealth, in spite of the restriction which forbade such elections. The Presbyterians also came up to Westminster greatly strengthened, so that the Republicans and Anabaptists were both chagrined and alarmed by the aspect of affairs. Even in the army a change of political sentiment was being rapidly effected.

Meeting of the Convention Parliament.

The Convention Parliament met on the day appointed, April 25th. The Lords assembled as if by their own right, and passed a resolution which was equivalent to a restoration of the monarchy, since it declared that, in conformity with the ancient fundamental laws of the realm, the government consisted, and should consist, of King, Lords, and Commons. A further resolution affirmed that "whereas all the troubles of this realm, since it was attempted to destroy its ancient constitution, have been caused by the separation of the head from the limbs, it is necessary first of all to heal this breach, and to restore the King to his people." A conference with the Commons was held on May 1st. Lord Manchester made a speech lauding the ancient Constitution as "the

best in the world," and adding, "Where the word of a king is there is power," to all which views and resolutions the Commons gave joyful acceptance.

The King's return.

After an ineffectual movement in the Upper House to impose conditions upon the crown, measures were taken for the immediate return and proclamation of the King. The proclamation was nominally an unconditional surrender of the people to the sovereign. It acknowledged that immediately on the death of Charles I. the crown had descended by right of birth and undisputed succession to his son; and Lords and Commons, City magistrates, and other citizens attending its promulgation, promised obedience to the King and to the royal line for themselves, their children, and their descendants for ever. It is true that a reservation was made in favour of individual rights and claims, but the one absorbing thought was joy at the restoration. Charles received a deputation of twelve peers and six commoners at the Hague inviting him to return, and it is curious that the spokesman for the Lower House was Denzil Holles, one of the five members whom Charles I. endeavoured to arrest, and whose action on that occasion precipitated his downfall. The restored King landed at Dover on May 25th, and on the 29th, his thirtieth birthday, made his triumphal entry into London, being received with unbounded enthusiasm. The House of Commons, through their Speaker, presented resolutions to him in the evening at Whitehall, providing that the old oath of allegiance and supremacy should be renewed, and that the King be requested to confirm *Magna Carta*, the Petition of Right, the statute respecting the power of Parliament to approve taxes, and the other privileges of Parliament. Charles, who was ready to promise almost anything, replied that "in all that concerned the maintenance of the laws and of religion he was as ready to grant as the people to ask; his whole wish was to make them as happy as he was himself."

Death of absolutism.

But while the monarchy was thus restored, as the only means of solving the constitutional and other difficulties,

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Charles II. could not expect to play the part which had proved fatal to his father. Absolute monarchy had perished, never more to be re-established, and if the Puritans and Republicans had secured nothing else, this was a great achievement in the interests of the people. Henceforth the King could no longer act independently of, or in defiance of, Parliament.

The Bill of Indemnity.

Ostensibly, the Convention Parliament was merely called to secure the return of the King, but it was found necessary and expedient that it should undertake other labours, and Charles recognised its authority as lawful. The first great matter which occupied its attention was the bill of indemnity to be granted, with certain exceptions, for acts committed during the Commonwealth. Debates of a prolonged and exciting character took place in both Houses as to those who ought to be exempted from the King's pardon. The Lords voted to except all who had signed the death-warrant against Charles I. or who had sat when sentence was pronounced, and five others, by name Hacker, Vane, Lambert, Haselrig, and Axtell. They also inserted in the bill a vindictive and barbarous clause, giving the next relations of the four peers who had been executed under the Commonwealth—Hamilton, Holland, Capel, and Derby—the privilege of naming one regicide each who should be executed. When the amended bill was discussed by the Commons, the latter deprecated the severity of the peers, feeling that the King was bound in honour to save those of his father's judges who had surrendered themselves in accordance with the terms of Charles's proclamation on landing. Ultimately the matter ended in a compromise. The Commons left Hacker, Axtell, Vane, and Lambert to their fate, but with regard to the two latter desired a joint address of both Houses to the King praying that if condemned their execution might be remitted. Some, like Haselrig, were saved altogether, and others were reserved for penalties not extending to life. The regicides who suffered the death penalty in the first instance were Harrison, Scott, Scrope, Jones, Clement,

SPEAKERS ORDER FOR THE COMMITTAL OF THE REGICIDES TO THE TOWER,
AUGUST 25, 1660.

BOROUGH OF LEWISHAM
MANOR HOUSE
BRANCH
PUBLIC LIBRARIES

By vertue of an ord. of the Comons assembled
in Parliament bearing date this day. These are
to will and require you to receive into yor Charge
out of the Tower of London the bodies of Colls.
Martin, Coll Downes. Colle Lelbourne Jo: Carew
Esq. Colle. Smith. Coll. Peters Temple
and Coll. Waite Mr. Tichborne Owen &c. Coll. Hacker
Hew: Peters. Mr Haselrig Mr Marten Dier. Potter Scroop. Millington
Harrison. Jones Garland, & Cold: Downington -
who with Corporall Axtell delivered you by the Serjeant
at Armes attending the said Comons being some
of those who sate in Judgment upon the late
King Majte and them to keepe in safe Custody
till further ord: Hereof you are not to fayle
and for so doing this shall be yor Warrant Dated
at Westminster this 25th of August 1660

To Sr John Robinson Knt and
Barte Lieftent of the Tower
of London.

Ja: Prinston
Speaker

and Carew, with Cook, the solicitor at the King's trial, Hacker and Axtell, who commanded the Guard, and Hugh Peters. At a later date three more—Barkstead, Corbet, and Okey—were brought to the scaffold. The bodies of Cromwell, Ireton, and Bradshaw were exhumed and exposed to great indignities, while the ashes of Pym and Blake were cast forth from Westminster Abbey. The ignominy of these acts does not rest upon such illustrious men as Cromwell, Pym, and Blake, but upon the fickle Englishmen who could thus act, and who would have trembled in their presence whilst living. At the trial of the regicides, however, while it was stated that the law in all cases preserved the person of the King inviolate, it was also conceded that there was a remedy against his Ministers for whatever might be done unlawfully in his name. It was thus rendered impossible in future for a Minister to shelter himself behind the sovereign if Parliament were resolved to bring him to judgment.

Royalist restitution.

The Houses next addressed themselves to the question of the restitution of the Crown and Church lands. With regard to the clergy particularly, the Commons were not inclined to reinstate the old owners on favourable terms, and nothing definite was done before the adjournment. Afterwards, upon the dissolution, parties were left to the action of the law, with the result that the Crown, the Church, and many Royalists came victoriously into their property. But the great body of the Cavaliers who had compounded with the Parliamentarians, or whose estates had been sequestrated for a time, had no redress. They consequently murmured against Charles and the act of indemnity, and especially against Clarendon, who was resolved to see the indemnity honourably carried out.

The King's revenue.

The revenue then engaged the attention of Parliament, and a committee was appointed "to consider of settling such a revenue on his Majesty as may maintain the splendour and grandeur of his kingly office and preserve the Crown from want and from being undervalued by his neighbours." The revenue of Charles I. from 1637 to

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1641 had amounted to £900,000 per annum on the average, but quite £200,000 of it arose from sources either not warranted by law, or no longer available. The Commons now voted Charles II. £1,200,000 per annum, a perfectly adequate amount for all ordinary charges, if it could have been raised always, but some of the sources of revenue fell short of the estimated amount. Moreover, Charles was embarrassed by debts contracted abroad. The Lower House was determined upon keeping the King financially dependent. One of the members expressly said that they took care to continue the royal purse in their own power. Feudal tenures, those harassing burdens which had prevailed since soon after the Conquest, were abolished, and an excise was granted instead, together with tunnage and poundage, now granted to the King for life. The Court of Wards was next taken away, and the rights of purveyance and pre-emption abolished. These were great concessions to the popular spirit, and mitigated to some extent the objectionable precedent of the hereditary excise. Altogether, considerable constitutional advances were made, especially as regarded curtailing and defining the limits of prerogative. To relieve himself from his embarrassments, Charles subsequently married (in 1662) Catherine of Braganza, daughter of John of Portugal, who not only brought him half a million sterling, but Tangiers, Bombay, and the advantages of a free commerce.

Disbandment of the Army.

Before it broke up, Parliament disbanded the army, for the Commons looked with jealousy upon a formidable and expensive military force; but the King retained General Monk's Coldstream regiment and one other, while a third was formed out of the troops brought from Dunkirk. These regiments, under the title of Guards, formed the nucleus of the present regular army of Great Britain.

The religious difficulty.

Now arose the religious difficulty, which, indeed, must sooner or later have pressed to the front, seeing that there could not be ecclesiastical harmony between the Presbyterians and the Episcopalians—both of which bodies,

however, had brought about Charles's restoration. The King had solemnly subscribed to the League and Covenant, but, on the other hand, he must support and reinstate the Church of England to satisfy the Royalists. The Commons introduced a bill for confirming and restoring ministers, with the double object of replacing in their benefices (but without legal right to their intermediate profits) the episcopal clergy who by ejection or forced surrender had made way for intruders, and also of establishing the possession, though originally usurped, by those against whom there was no claimant living to dispute the holding, as well as of confirming those who had been presented on legal vacancies. But this did not smooth over all the difficulties. With the full revival of Anglicanism, the nonconforming clergymen were subjected to the old perils, and they looked to the King for relief; the Presbyterians trusted to compromise for the retention of their benefices; while the Independents claimed the liberty of conscience promised in the Declaration of Breda. On being appealed to, Charles declared in favour of a compromise in religious matters; he did not deem it prudent for the time being to expose his real views, which were diametrically opposed to those of the Presbyterians and the moderate Episcopalians.

Dissolution of Parliament.

With the position of the Church still undetermined, the King dissolved the Convention Parliament on December 29th, 1660. He saw that it was not the instrument for carrying out his ulterior designs in Church and State. Although it had restored the monarchy, settled the income of the Crown, and given back their estates to the dispossessed, it had not entirely pleased Charles by its treatment of the army and other questions. Then there was a strong Presbyterian element in it, which could not go back either upon its political or religious traditions. Altogether this important Parliament did not promise to act as a body completely pliable to the King's will, and Charles dissolved it in the hope of finding its successor more nearly in accord with his own views, especially on the question of the ecclesiastical settlement.

CHAPTER II.

THE CAVALIER PARLIAMENT.

The Pension Parliament.

THE next Parliament, which is known under the various titles of the Cavalier Parliament, the Pension Parliament, and the Long Parliament of the Restoration, was summoned to meet on May 8th, 1661. It sat through seventeen sessions, and was not dissolved until December 30th, 1678. This Parliament consisted of 142 peers and 507 commoners. The Lower House was very different in its constitution from its predecessor. The Cavalier interest was now overwhelming; the landed gentry and the clergy exercised unbounded influence; and not more than sixty Presbyterians and others succeeded in obtaining seats. Sir Edward Turner, who was closely connected with the Duke of York, was chosen Speaker, and although in his initiatory address he alluded to the privileges of Parliament, liberty of speech, and other matters, his speech was chiefly laudatory of the newly restored monarch.

The Restoration policy.

Lord Chancellor Hyde, however, more clearly foreshadowed the Restoration policy when, in answer to the Speaker, he said, "It is the privilege, if you please, the prerogative—and it is a great one—of the common people of England to be represented by the greatest and learnedest, the wealthiest and wisest, persons that can be chosen out of the nation, and the confounding the Commons of England with the common people of England was the

first ingredient in that accursed dose which intoxicated the brains of men with the imagination of a Commonwealth, a government as impossible for the spirit, temper, and genius of the English nation to submit to as it is to persuade men to give their cattle and their corn to other men and to live upon roots and herbs themselves. That monster, Commonwealth, cost this nation more in her few years, than the monarchy in six hundred years." This language, coming from a high official personage on the whole so moderate, boded ill for the Presbyterians and Nonconformists. The Parliament thus inaugurated was destined to acquire an evil repute in our annals for its repressive legislation and its cruel suppression of religious liberty.

Anti-Republican feeling.

The first resolution passed by the new Parliament was to the effect that all its members should on a certain day receive the Sacrament at St. Margaret's Church, according to the form prescribed in the Liturgy; and on May 17th the instrument called the Solemn League and Covenant was ordered (by 228 votes to 103) to be burned by the common hangman. This was followed by the burning of the act which ordered the trial of Charles I., and a similar process was voted with regard to the acts deposing Charles Stuart and providing for the safety of Cromwell. Knowing the temper of the House, the Presbyterians were very anxious for the confirmation of the Act of Indemnity, which still awaited this important step. There was much opposition to it, but Lord Clarendon wisely and honourably stood firm, Charles interposed his authority, and the bill was at last passed with no new exceptions, and presented to the King. A sum of £60,000 was voted for the distressed Cavaliers, but it was held to be inadequate, and failed to pacify them.

Royalist measures.

Parliament then proceeded to legislate on lines diametrically opposed to those of the Long Parliament, being resolved, if possible, to destroy all traces of the Commonwealth. It was declared treason to wage war against the King, to make him prisoner, to desire his deposition, or to compass his death; and any one expressing any such intention in speech or writing was to

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be condemned as a traitor. To charge the King with heresy and to attribute to him a wish to introduce Popery were made punishable offences. The supreme military authority was vested exclusively in the Crown. It was declared that neither House of Parliament could lawfully levy any war, offensive or defensive, against his Majesty; and that there was no legislative power in either or both of the Houses without the King. Bishops were restored to their seats in the House of Lords. Finally, a statute was passed against those "disorderly assemblies" which had given considerable trouble in the previous reign.

Right of Petition.

This law provided that no petition or address should be presented to the King or either House of Parliament by more than ten persons, nor should any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in Church or State, unless with the previous order of three justices of the county or the major part of the grand jury. This new legislation annulled much of the work of the Long Parliament.

The Corporation Act.

But the Royalist party had still more disabling measures in reserve. The Corporation Act was now introduced, with the object of destroying the power of the Dissenters in the towns. This act, as Hallam justly observes, "displayed a determination to exclude a considerable portion of the community from their civil rights." All magistrates and corporation officials were required to swear that they believed it unlawful, on any pretence whatsoever, to take up arms against the King; to renounce all obligations arising out of the oath called the Solemn League and Covenant; to take the oaths of supremacy and allegiance; and to take the Sacrament according to the rites of the Church of England within twelve months of their election to office. This act pressed injuriously upon the Nonconformists for a long period, though it practically became a dead letter some time before its repeal in 1828.

Execution of Vane.

One of the worst and most revengeful acts of this Parliament, however, was the execution of Sir Henry

Vane. It was a deep stain both upon the King and the Houses. On July 1st, 1661, the Attorney-General was requested to proceed against Vane and Lambert, who were then lying in the Tower. A promise had been given that they should not suffer death when they were excepted from the amnesty, but when a motion was made in November to lay the bill against them aside, in consideration of the King's proclamation, it was lost by 124 to 109. The indictments against Vane and Lambert alleged high treason on the ground of their exercise of civil and military functions during the usurping Government, though this charge would have embraced many who afterwards clamoured for the King's return. Vane boldly adhered to his old doctrines during his trial, affirming that Parliament was lawfully in existence even after the death of Charles I., and that it was impossible to commit treason against a king who was not in possession. It had been decreed that he must die, however. The bill was sent up to the Lords in January 1662, and Vane and Lambert were condemned. A statute of Henry VII. assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered when another claimant should obtain possession of the throne. The obvious meaning of this statute was to indemnify all persons who obeyed any government for the time being, whatever might be its nature ; and it was unworthy legal quibbling of the judges to seek to enmesh Vane by declaring that Charles II. had been king *de facto* as well as *de jure* from the moment of his father's death. Lambert was sent a prisoner to Guernsey, but Vane was beheaded on June 14th, 1662. Only seven days before his death the King had written to Clarendon that he was too dangerous a man to let live, if he could be "honestly put out of the way." So by the execution of Vane the judges stained the law, and Charles violated his promise. The whole episode was evil from first to last, as tending by its vindictiveness to destroy faith in the very seat of government.

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Repeal of the Triennial Act.

The two Houses next took in hand the Triennial Act, which had been passed by the patriots of 1641 as a check upon the royal prerogative. If the usual means were not taken of summoning a new Parliament within three years after a dissolution, the electors were given by this act the power of doing so as a last resort. Although no action was thus contemplated by the people until all legal and constitutional methods had failed, the Royalist spirit was so rampant that it could not even brook the least semblance of popular interference with the sovereign. Bills for repealing the Triennial Act were accordingly more than once ordered to be introduced, but no definite action was taken until the session of 1664, when that measure which had been welcomed as the people's security against the sovereign was repealed on the ground that it was "in derogation of his Majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of Parliaments." But while the old act was completely repealed, a clause was, curiously enough, carried in the new providing that Parliaments should not in future be intermitted for above three years at the most. The substance therefore of the original bill was retained, though the clauses which provided for the maintenance of the principle were lost. The Triennial Act was very distasteful to Charles and his Minister. In opening the session of 1664, the King had deliberately stated that while he should not be happy without frequent Parliaments, yet, if ever he thought otherwise, he would "never suffer a Parliament to come together by the means prescribed by that bill." Clarendon, who by this time had abjured many of those doctrines which he formerly regarded as the bulwark of the State, characterised the bill as infamous, and declared his conviction that "the late rebellion could never be extirpated and pulled up by the roots till the King's regal and inherent power and prerogative should be fully avowed and vindicated, and till the usurpations in both Houses of Parliament since the year 1640 were disclaimed and made odious."

Parliamentary events were marching rapidly in a retrograde direction.

Early in the session of 1662 the House of Commons took a strange step in the matter of the revenue. The King met the members at Whitehall on March 1st, and complained, not for the first time, of his money difficulties. He gave assurances that he was in no wise tainted with Presbyterianism, but, being a member of the Church of England, was as anxious for uniformity as any member of Parliament. Upon this the House imposed a few days afterwards an old and a very obnoxious tax. The tax thus brought back was the hearth tax of the Norman kings, by which each household, rich or poor, was to pay two shillings to the King and his descendants. This was a return to a form of impost objectionable in itself, and against whose spirit Hampden and other patriots had sturdily protested.

The Hearth Tax.

The Church question, which still remained undetermined, was soon to be dealt with on a principle of "thorough," sufficient even to have satisfied a Strafford. Nevertheless, the King still professed to be friendly to the Presbyterians, and some time before (October, 1660) he had even issued a declaration announcing a number of reforms in the desired direction.

The King and the Church.

Hallam and other historians believe that Charles made these promises with a deliberate intention to deceive the Presbyterians, and this view is supported by what subsequently occurred. After the dissolution of the Convention Parliament, Charles proceeded to fill up the number of bishops, which had been reduced to nine, but nothing was done with regard to suffragans or the Council of Presbyters; but, to allay the suspicions of the Presbyterians, the Savoy Conference was held in May, 1661, between twenty-one Anglican and an equal number of Presbyterian divines. Baxter and his friends brought forward their objections, but the Churchmen met them in a bitter and haughty spirit, and the conference broke up in anger, parties being more divided than ever. Some alterations were subsequently made in the Liturgy.

Charles's action.

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The Act of Uniformity.

but they rather exasperated than pacified the Presbyterians. In the session of 1662 the Act of Uniformity was brought forward in Parliament, and the Nonconformists learnt with surprise and indignation that, while it restored all the ceremonies and other matters to which they had taken exception, it also contained fresh clauses equally objectionable. Not only in future was every beneficed minister, but every fellow of a college and every schoolmaster, to declare his unfeigned assent and consent to all and everything contained in the Book of Common Prayer. Episcopal ordination for ministers was likewise to be made universal. The clerical party prevailed all round, and even rejected certain conciliatory clauses proposed by the Lords. The Act of Uniformity, in its final shape, was passed on May 19th. After declaring that a universal agreement in the matter of public worship was conducive to the peace of the nation, the act bade all ministers in churches within the realm of England and Wales to use the Book of Common Prayer and read the morning and evening prayers therein. All clergymen, etc., holding benefices, were publicly to read and declare their assent to the same book by St. Bartholomew's Day, 1662, and if they refused, were to be deprived of their livings. For the future all persons presented to benefices were to make a similar declaration. Every incumbent was to read the services publicly at least once a month, under a penalty of £5. Every dean, university reader, parson, schoolmaster, or private tutor, was to make declaration as to the unlawfulness of bearing arms against the King on any pretence whatsoever, and to deny the binding force of the Solemn League and Covenant. Schoolmasters and tutors were not to teach before obtaining a licence from the bishop or archbishop in whose diocese they were. No one who had not been episcopally ordained was to hold a benefice after St. Bartholomew's Day, 1662. Heads of colleges and lecturers were to subscribe to the Thirty-nine Articles, and declare their assent to the Book of Common Prayer.

An attempt to mitigate the rigours of this short-sighted and reactionary legislation was made in the King's Privy Council by Monk and Manchester, but in vain. The bishops, led by Sheldon, of London, insisted on its being carried out in its entirety. The consequence was that when that day of evil omen came, St. Bartholomew's Day, some two thousand clergymen, who refused to sell their consciences, were driven forth from the Anglican Church, many of them men of great learning and noble character. The conduct of Parliament in passing the Act of Uniformity is to be condemned on every ground, and none the less seeing that in the restoration of the King the very men against whom it was aimed had played a most essential part. The Presbyterians were injured by that very constitutional instrument which could not have been called into being but for the return of the king. As for Charles himself and his Minister Clarendon, the former was unquestionably guilty of a breach of faith in permitting, and the latter censurable for strenuously supporting, this arbitrary act.

Exodus of Nonconformist clergy.

In October, 1662, Charles sold Dunkirk to the French for five million livres—an act which not only offended many of the English people, but Protestant Holland, which regarded it as a bulwark against Catholic France and Spain. Not long afterwards Charles began to cast about to see in what direction he could relax the penal laws against his Roman Catholic subjects. They had rendered him great service, and he was anxious to grant them indulgence. His general attitude towards the Catholics led to the impression that he was strongly tinged with their views, and many declared him even to be a Papist in secret. This caused him to put forth an assurance that he was far removed from anything like Popery. That Charles intrigued and negotiated with Rome, however, is beyond question, and a document exists conveying an offer in his name to the Papal See to renounce the communion of the Protestant Churches and return to that of Rome.[1]

Charles and the Catholics.

[1] In the Archives at Paris, quoted by Ranke, and dated Feb. 1663.

CHAP. II.

The Cavalier Parliament.

Declaration of Indulgence.

In opening the session of 1663, the King pressed the acceptance of a declaration of indulgence he had put forward, and urged the grant to himself of a dispensing power—a power which he was anxious to use in the interests of the Catholics, but not in the interests of the Protestant Nonconformists. The Lord Chancellor did not rise in support of the claim, however, and the Lower House replied to the King in an address rejecting his proposals. They denied that any obligation lay on the King by virtue of his declaration from Breda, which was to be understood to depend on the advice of Parliament, and they intimated that he possessed no such dispensing prerogative as was suggested by his request. The Commons further objected to the whole scheme of indulgence, as tending to increase sectaries and to disturb the peace ; and in a second address they remonstrated against the release of Calamy, the distinguished Dissenting divine, who had been set at liberty on Charles's personal order. In the Lords a bill was introduced empowering the King to dispense with the laws which prescribed obedience to the discipline and doctrine of the Church ; but the bishops, whose re-entry into the House Charles had thus substantial cause to regret, strongly opposed the measure, and it was thrown out. As for the Commons, so far from lightening the lot of the Catholics, they were so moved by their insolence and the disdainful demeanour they assumed in consequence of the Court's favour, that they petitioned for their expulsion from the kingdom, and also brought in bills to arrest the further growth of Popery.

Proposed impeachment of Clarendon.

Meanwhile a determined but unsuccessful attack was made against Clarendon in the House of Lords. This great Minister was supported by the Queen, but opposed by Lady Castlemaine, one of Charles's numerous mistresses. It was distressing to one like Clarendon to witness the profligacy of the Court. Naturally therefore the Chancellor was irksome to the King, and he had, moreover, a bitter enemy in the Earl of Bristol, who headed the Roman Catholic party. Bristol saw that

Clarendon was a stumbling-block in the way of his own designs; and, angered by the Chancellor's opposition to the Declaration of Indulgence, he brought forward in the House of Lords, July 10th, 1663, a motion for his impeachment. The charges were that Clarendon, by slanderous reports as to the King's life and by proposals contrary to the interests of England, including a treaty with the see of Rome respecting a Catholic bishopric, was seeking to alienate from the sovereign the affections of his people. He charged the Chancellor with endeavouring to get the whole management of affairs into his own hands, and accused him of high treason. When the articles of impeachment had been read, the King's brother, the Duke of York (who had married the daughter of Clarendon), rose, and informed the Lords that his Majesty highly disapproved of this impeachment. Clarendon also defended himself; and flaws being found in the drawing up of the indictment, the judges declared that the impeachment ought not to be allowed to go on. Bristol's attempt thus proved abortive, though it excited a great amount of interest. The mover endeavoured to raise the question again in the ensuing session, but found no support.

The Conventicle Act.

Further harassing legislation, aimed at the non-conforming Anglican clergy, was brought forward in the session of 1664. Not content with the ejectment of the clergy under the Act of Uniformity, the dominant party, alleging frivolous reports of conspiracy and insurrection, introduced the Conventicle Act. It was a measure for suppressing conventicles unjustly stigmatised as "seditious," and inflicted on all persons above the age of sixteen attending any religious service not in accord with the practice of the Church of England,—at which five or more persons besides the household should be present,—a penalty of three months' imprisonment for the first offence, six for the second, and seven years' transportation for the third, on conviction before a single justice of the peace. To empower a justice of the peace to convict without a jury was, as Burnet observed, considered a

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great breach of the principles of the English Constitution. But Parliament was governed by religious prejudice, and now pressed forward its oppressive statutes.

The Five Mile Act.

Not only was the Conventicle Act passed, but in the session of 1665, which was held at Oxford in consequence of the terrible Plague then devastating London, a further restrictive measure against the Nonconformist clergy was adopted. This new oppressive statute enacted that all persons in holy orders who had not subscribed the Act of Uniformity should swear that it was not lawful, upon any pretence whatsoever, to take up arms against the King, and also that they would not at any time endeavour to procure any alteration of government in Church or State. Any non-conforming clergyman refusing to take this oath was not only made incapable of teaching in schools, under a penalty of £40 fine and six months' imprisonment, but prohibited from coming within five miles of any city, corporate town, or borough sending members to Parliament. The object of this measure, which is known as the Five Mile Act, was to deprive the ejected clergy of their means of livelihood both by preaching and teaching. So violent was the feeling of the majority in the House of Commons that they actually endeavoured to impose the oath of non-resistance upon the whole nation,[1] and the bill was only lost on a division by a small majority. This arbitrary legislation was due in a considerable degree to political motives. The Church party feared toleration as much for its anticipated effect upon the State as upon religion. But whatever might be the moving spring of the repressive legislation known as the Clarendon Code, it soon had its effect in filling the gaols not only with ministers who had suffered previous persecution, but with the laity. The whole spirit of the legislation was cruelly unjust.

Reaction against tyranny.

It was inevitable that a reaction should set in against such a system of government. Many factors aided in

[1] Hallam interprets this to mean upon all persons in any public or municipal trust.

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precipitating this. Personal liberty was less secure than under the military rule of Cromwell; a religious persecution unknown in the Protector's days, and more severe in some respects than that of Charles I.'s reign, prevailed; the country was burdened with a heavy taxation, far greater during the first seven years of Charles II. than in any preceding similar period; the nation was disgusted with the sale of Dunkirk, which was humiliating to its pride; and the vices of a voluptuous Court began to stink in the nostrils of the people. Then in 1665 the Dutch war began. While it was in progress the Plague broke out in London, and in the succeeding year the Great Fire of London devastated a large portion of the metropolis. Charles's despotic religious work was carried out in Scotland during this period by Archbishop Sharp, whose persecuting High Commission Court led to an unsuccessful revolt of the Covenanters.

Popular party in the Commons.

A party of opposition to the Crown gradually sprang up in the House of Commons. Session by session the new party grew, until Charles and his Ministers found that at length it could neither be bought nor broken. When the administration was gravely occupied with the war with Holland, the House of Commons reverted to a consideration of the ancient principles of taxation. It decided that supplies should only be appropriated to limited purposes. A war grant of £2,500,000, which should have been extended over three years, was spent in 1664. Notwithstanding this, in the session of 1665-6 a supply of £1,250,000 was voted for the Dutch war, but Sir George Downing, one of the tellers of the Exchequer, introduced a proviso into the subsidy bill that the money raised should be used exclusively for the purposes of the war. This was carried by 172 to 102 votes. The Chancellor was indignant at this "innovation," but the King yielded to it on the ground that the money would be more easily advanced by the bankers, in anticipation of the revenue, upon the better security offered for speedy repayment. From this time forward the principle that supplies granted by Parliament are only to be expended for

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particular objects specified by itself was undisputed, and at length passed into constant practice and recognition. "It drew with it," remarks Hallam, "the necessity of estimates regularly laid before the House of Commons; and, by exposing the management of the public revenues, has given to Parliament not only a real and effective control over an essential branch of the executive administration, but in some measure rendered them partakers in it."

Checks on the expenditure.

From this the Commons advanced yet another stage. Having asserted the right of appropriating supplies, in the session of 1666 they appointed a committee to inspect the accounts of the officers of the navy, ordnance, and stores, which had been laid before them by the King's direction. The Dutch war had proved costly and indecisive, and there was a suspicion afloat that public money was being diverted from its legitimate purposes. As the committee nominated could not examine on oath, the House abandoned this mode of procedure, and drew up a bill appointing commissioners to inspect the public accounts, with power to report upon defaulters. The House was really anxious to ascertain whether the treasurers had not issued money without legal warrant rather than to examine the details of the expenditure. Clarendon, who was quite the King's man in matters of prerogative, was highly incensed with the Parliament, and described the bill as an encroachment and usurpation that had no limits. Charles also was greatly disturbed by the step, for large sums had been spent on his licentious pleasures, that were thus unconstitutionally diverted from their original purpose. Pepys, in his *Diary*, relates that the resolve to appoint a committee of inspection made "the King and the Court mad." Charles gave orders to the Lord Chamberlain "to send to the playhouses and brothels to bid all the Parliament men that were there to go to the Parliament presently; but it was carried against the Court by thirty or forty voices." It was believed that since the war more than £400,000 had gone into the privy purse. The Chancellor vehemently opposed

the bill in the Lords, and the bill was still pending when Parliament was prorogued. After the Chancellor's downfall, the House of Commons again introduced their bill, and this time it became law. The commissioners nominated were invested with very extensive powers, "both as to auditing public accounts and investigating the frauds that had taken place in the expenditure of money and employment of stores." Not one of the commissioners was a member of either House of Parliament. Their report revealed great abuse and misapplication of the public revenues, and the exposures were very damaging to the Government and the King. One result of the investigation was the expulsion from the Lower House in 1669 of Sir George Carteret, who, as treasurer of the navy, had issued money without legal warrant.

Fall of Clarendon.

Clarendon was now to find insurmountable the difficulties which had long been gathering round his head. The King was weary of him, disliking his idea of the independent authority of the administration, and Parliament was antagonistic to his views on prerogative and the granting of supplies. Clarendon's friend Southampton had recently died, and he now stood alone. The Dutch admiral De Ruyter appeared at the mouth of the Medway early in June, 1667, burned the forts at Sheerness, made his way up to Chatham, and destroyed several men-of-war. Shortly afterwards the Peace of Breda was concluded (July 31st) between England on the one side and France, Holland, and Denmark on the other. After a costly war, lasting for more than two years, and for whose mismanagement Clarendon was made responsible in the public eye, this peace left affairs pretty much as they were before the quarrel. All these matters told against Clarendon, and perhaps the most powerful individual influence against him was that of Lady Castlemaine. Under her inspiration Charles was proof against Clarendon's plea of long and faithful service, and in August he dismissed his Minister. Sir Orlando Bridgeman received the Great Seal in his place.

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His impeachment.

When Parliament reassembled in October, the House of Commons impeached Clarendon on charges of high treason. While this formidable accusation could not be justified, the Chancellor was culpable on many points of government. As a statesman he was undoubtedly in the main honest, he was a most devoted friend of the Church, and generally he had a zealous regard and reverence for the Constitution; but there were unquestionably grave faults in his administration.

The articles against him.

The first article of his impeachment, and that the most serious, set forth that "the Earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the King to dissolve this present Parliament, to lay aside all thoughts of Parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." There was some foundation for this charge, as Clarendon had said to the King at the council board that "Queen Elizabeth did do all her business in 1588 without calling a Parliament, and so might he do for anything he saw." The fourth article alleged that the Chancellor had "advised and procured divers of his Majesty's subjects to be imprisoned against law in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his Majesty's subjects in like manner." There was ground also for this charge, as Clarendon had encouraged informers, while admitting that the infamous practice had grown into a trade by which men got money, and that many were committed on slight pretexts. Although it was extremely difficult to obtain a writ of *habeas corpus* from the judges at this time, that was no reason why men should be removed out of the kingdom to evade the possibility, and the Chancellor's offence in this respect was not without reason held by many to justify impeachment. The fifth article alleged that Clarendon had corruptly sold offices; the sixth that he farmed the Customs at under-rates; the ninth that he introduced an arbitrary government in his Majesty's

plantations; the eleventh that he had advised and effected the sale of Dunkirk to the French king for no greater value than the ammunition, artillery, and stores were worth; the fifteenth that he procured the bills of settlement for Ireland, and received great sums of money for the same, in most corrupt and unlawful manner; and the sixteenth article, which is the last calling for special notice, alleged that he had deluded and betrayed the King and the nation in foreign treaties and negotiations relating to the late war, and discovered and betrayed his secret counsels to his Majesty's enemies. There is no doubt that Parliament was greatly exasperated by Clarendon's French policy, which induced Charles "to seek the wages of dependence in a foreign Power, and to elude the control of Parliament by the help of French money." Looking at his foreign action, and coupling with it his home policy, the main plank of which was persecution of the Nonconformists, historians have justly denied Clarendon the right to take rank with the greatest and wisest of English statesmen.

Flight of Clarendon.

In the debates on the impeachment, the famous Andrew Marvell, member for Hull, said he "would have the faults hunt the persons," but he would not have a sudden impeachment by reason of the greatness of the person or danger of escape, Lord Clarendon not being likely to ride away post. But this was exactly what he did do. His spirit collapsing under the prosecution, the Chancellor fled from the country, leaving a lengthy apology behind him, and promising to return and defend himself at a more convenient season. This pusillanimous conduct told against him, and a bill for his banishment, sent down from the Lords, was carried in the Commons by 65 to 42 votes. Clarendon escaped punishment, and survived his banishment six years, during which period he completed his *History of the Grand Rebellion*. While the articles against Clarendon did not perhaps justify his condemnation on capital charges, and while the proceedings had no definite result, the Commons reasserted by his prosecution the great constitutional right of impeachment.

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The Cabal Ministry.

After the Chancellor's fall, the government lay chiefly in the hands of the Earl of Arlington and the Duke of Buckingham; but the Ministry as a whole became known as the Cabal administration, from the initial letters in the names of the five persons who composed it—viz., Clifford, Arlington, Buckingham, Ashley, and Lauderdale. It began well, and with the aid of Lord Keeper Bridgeman, Chief Baron Hale, and Bishop Wilkins, proposed a religious pacification on the basis of comprehension for the Presbyterians and toleration for the rest. The speech from the throne intimated a desire for agreement, but the party against toleration in the Commons was still too strong. Consequently a motion that the King be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his Protestant subjects was lost by 176 to 70 votes. Besides rejecting conciliation, the House went on to renew the act of 1664 for the prevention and suppression of seditious conventicles.[1] Nothing came of the measure temporarily, owing to the sudden prorogation of Parliament in May.

The Triple Alliance.

Adjournment after adjournment now took place, and in the interval a foreign engagement was concluded which was favourably viewed by the nation. This was the Triple Alliance, a coalition formed in 1668 by England, Sweden, and Holland against the domination of the French king. It speedily led Louis XIV. to conclude the Peace of Aix-la-Chapelle, by which the Spanish Netherlands were preserved from complete conquest and absorption.

The King's policy.

Charles II. was not so tyrannical in some respects as his father, but he had an equal desire to be independent of his Parliament. In his case, however, it was not so much from high views of prerogative, as from motives of pleasure, though he certainly also regarded with jealousy

[1] Hallam says the majority was almost equal to that which rejected comprehension ; but I find that the numbers on the Conventicles Bill were only 144 to 78.

the privileges of the people and of their constitutional representatives. There had been several premonitory symptoms of a change of feeling in the House of Commons which boded no good for his government, notably in the session of 1667, when Parliament petitioned for the disbandment of the army as soon as peace had been made. The Duke of York, anxious as the King himself on the question of prerogative, saw that it could only be maintained by the aid of a regular army, and as Parliament was not likely to vote the supplies, the only way was to contract a union with France. On January 25th, 1669, a conference was held between the King, his Catholic brother, Lord Arundel of Wardour, and Ministers Clifford and Arlington, when it was agreed to solicit the aid of the French king towards the advancement of the Roman Catholic religion in Great Britain. Out of this consultation sprang the Treaty of Dover, which contemplated the destruction of the United Provinces, and was nothing less than a conspiracy against the Protestant liberties of Europe. By this instrument Charles II. agreed to attack the Dutch fleet, while Louis was to invade the Provinces by land. The English king was to receive under this dishonourable compact an annuity of £200,000, Zealand when it should be taken, and the aid of six thousand French troops for home use. But the noble resistance of the Dutch, under the Prince of Orange, frustrated the whole design.

Treaty of Dover.

It was time for Englishmen to be stirring when such projects were on foot. Although the exact terms of the treaty were not known, enough came out to make the Dover transaction extremely repugnant. Indeed, it has not unreasonably been regarded as the first act of the drama which ended in the Revolution. A strong opposition began now to be formed in the House of Commons, which, under the title of the Country Party, included Puritans, Republicans, and those Royalists who had become disaffected in consequence of the King's vices. Then there were others who, while belonging to the Church, were disgusted by the coercion of the Noncon-

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formists, which had reached such a pitch as to procure the insertion of this extraordinary proviso in the Conventicle Act: "That all clauses in this act shall be construed most largely and beneficially for suppressing conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof." The ill-feeling between the Court and the Opposition was not lessened by the abortive nature of an attempt made by a committee which sat at Brook House to inquire into the expenditure on the Dutch war.

Its attitude.

It is a matter of difficulty to follow the course of the various Parliamentary sections in Charles II.'s time; but as regards the attitude of the several constituent elements of the Country Party, the Dissenters in it refused to acknowledge the doctrine of non-resistance, but the party generally, while admitting that it was right to limit the powers of the Crown, to check its extravagances, and to control its expenditure, did not hold it right to resist the sovereign by force of arms.

Questions in Parliament.

The ninth session of Charles's second Parliament was opened on October 19th, 1669. A resolution was passed by the Commons agreeing to support the King against all opponents in the maintenance of the government in Church and State as then established. His Majesty was little mollified by this, and still less by the vote on the subsidies, the grant being fixed at not more than £400,000, which was to be drawn neither from the excise nor from the land tax. Hoping for the occurrence of favourable circumstances, the King prorogued the Houses on December 11th. When they reassembled in February, 1670, Charles told them that during the recess he had taken under his own supervision the inspection of the accounts, and he was convinced that not only the subsidies granted by Parliament, but, in addition, a large part of his other revenues, had been expended on the war. This taking upon himself work which belonged to Parliament surprised the Opposition, whose foremost leader was Sir Robert Howard—regarded by some as the ablest man in the kingdom. After several divisions, the

question of supplies was decided on February 18th. It was agreed to grant supplies to the King, but no fixed sum was voted. It was decided to establish a tax out of which the necessary amount was to come; this was a wine tax, to be levied for seven years, and it was estimated to produce annually about £300,000. The King was also allowed to dispose of his feudal estates. A good deal of bitterness had been caused by a wanton attack upon Sir John Coventry, said to have been perpetrated under the King's order by persons employed about the Court. A bill known as the Coventry Act was brought into Parliament in consequence, affording a certain measure of protection for members of the House of Commons, but it was transformed into a general act, making it a capital felony to wound with intention to maim or disfigure. Little legislation, however, of a general character was effected, but Ministers were active enough. The Exchequer was closed on the advice of Clifford and Ashley, and the English merchants, who had lent money to the King on the security of the revenue, lost about £1,300,000. A monetary panic ensued, banks broke, depositors were ruined, and the utmost distress prevailed.

The Coventry Act.

Declaration of Indulgence.

The position of affairs at the opening of the session of 1673 was very disquieting. On March 28th, 1672, war had been declared against the Dutch in accordance with the terms of the secret treaty concluded at Dover. The war was unnecessary, unwarranted, and inimical to British interests, and it was not long before its real character became apparent to the English people. Meantime, in order to conciliate the Dissenters, Charles issued a Declaration of Indulgence, nominally extending both to Protestant Dissenters and to Roman Catholics, but really intended to benefit the latter alone. The King did this by royal proclamation, and without having obtained Parliamentary sanction for the act. This was clearly overstepping his authority. Toleration was an excellent thing, but Charles's motives in granting it were tainted. Said the King in his declaration, "We think ourselves

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obliged to make use of that supreme power in ecclesiastical matters which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of Parliament." The document accordingly declared the penal laws suspended, and it was intimated that a number of Nonconformist places would be licensed for religious worship. Rather than put the Great Seal to the Declaration of Indulgence, Bridgeman resigned the Lord-Keepership, and was succeeded by Shaftesbury. Now, while the King could by his prerogative dispense with the penal statutes in favour of particular persons, and under particular conditions, this was a very different matter from practically sweeping away a whole body of statutes, as his Majesty soon discovered.

It is opposed and withdrawn.

The Houses met on February 4th, 1673. In his opening speech the King justified the war, and called upon the nation to falsify the predictions of the Dutch by supporting it. Then, with regard to the Declaration of Indulgence, he thus plainly spoke: "I shall take it very, very ill to receive contradiction in what I have done, and I will deal plainly with you; I am resolved to stick to my declaration." The Commons decided that the war must be carried on, and granted a supply of £70,000 per month for a period of eighteen months. But the Declaration of Indulgence met with a different fate. It was discussed at great length, and during the debate Sir Thomas Meres said he had conferred with books and persons learned in the law, and found that a general suspension of the penal statutes was against law. Mr. Attorney Finch observed that the question was "whether the King cannot dispense with the laws in order to the preservation of the kingdom, and we are all miserable if he cannot do it." But Sir Thomas Lee held that the King had been misled and mistaken by his Privy Council, and it was the duty of that great council of Parliament to inform him thereof. Some Nonconformists did not deem it right to accept a toleration illegally obtained, and a division showed that a majority

of the House supported the views of Meres and Lee. It was resolved, by 168 votes to 116, that "penal statutes in matters ecclesiastical cannot be suspended but by act of Parliament," and a petition and address were ordered to be drawn up and presented to his Majesty. Charles, in his reply, regretted that the House should question his ecclesiastical power, which had never been done before. Thereupon the Commons passed a second address, absolutely denying the King's right to suspend any law. "No such power was ever claimed or exercised by any of your Majesty's predecessors; and, if it should be admitted, might tend to the interrupting of the free course of the laws and altering of the legislative power, which hath always been acknowledged to reside in your Majesty and your two Houses of Parliament." On March 1st the King went to the House of Lords, and complained strongly of the two addresses from the Commons. A heated debate ensued, Lord Clifford describing the vote of the Commons as *monstrum horrendum ingens* [1]; but the Earl of Shaftesbury, to the amazement of the whole House, turned his back on the Indulgence, whereupon the Duke of York whispered to the King, "What a rogue have you of a Lord Chancellor!" and his Majesty briskly replied, "Cod's-fish, what a fool have you of a Lord Treasurer!" meaning Clifford, the indiscreet upholder of the Declaration. The Lords passed a vote merely expressing their satisfaction that the King had decided to settle the question in a Parliamentary manner. In the end this important contest between the King and the Commons was closed by Charles withdrawing his declaration.

The Test Act.

The Cabal administration was now nearing its end. This Ministry, as Macaulay has observed, exhibited in its policy "at once the latest trace of the 'Thorough' of Strafford and the earliest trace of that methodical bribery which

[1] Ranke says these words were spoken during the debate on the Test Act, but that is not so: the occasion was as now stated, the debates on the Test Act in the Lords coming a fortnight later

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was afterwards practised by Walpole." It was ultimately broken up by the passing of the Test Act. This act, passed at the instance of Shaftesbury and the Country Party, was intended to exclude from office the Catholic councillors of the King. It required all persons holding any office of profit or trust under the Crown to take the oaths of allegiance or supremacy, to receive the Sacrament according to the rites of the Church of England, and to subscribe the declaration against transubstantiation. Both Houses had already concurred in an address to the King against the growth of Popery, and this act marked a further and more decided step. It compelled the retirement from public business of Lord Treasurer Clifford and the Duke of York, Lord High Admiral. The Test Act was carried by a coalition between the English Churchmen, the Cavaliers, and the Dissenters; but as it pressed equally upon the Nonconformists and the Papists, a bill was brought in repealing many of the persecuting laws against the Dissenters. This bill was greatly altered in the Lords, and failed to pass in consequence of the sudden prorogation.[1]

The Commons oppose the Court.

The eleventh session of this protracted Parliament began on October 20th, though the speech from the throne was not delivered until the 27th. The King still demanded supplies for the Dutch war, the enemy having rejected his peace proposals. Although the Court had won over some of its opponents in the House of Commons, the very first debate went against the Government. The usual formal proposal that a grant should be made was rejected, on the ground that it was necessary to discuss at the same time the grievances of the country, those of a religious character in particular. Sir William Coventry,

[1] Before the Commons rose a debate took place on the printing of addresses to the King on certain grievances arising out of the quartering of soldiers, etc. On a motion to adjourn the debate the numbers were 105 to 105. The Speaker gave his casting vote for adjournment, and jestingly said "he would have his reason for his judgment recorded, viz., because he was very hungry."

described by Burnet as the best speaker in the House of Commons, led the Opposition. This possible Minister, as he was regarded, delivered a vigorous speech, connecting maritime and religious questions with political ones, for the purpose of opposing the political alliance with France, which he held to be harmful to both religion and trade. Coventry carried a motion to the effect that the House should refuse to pay the supplies unless the obstinacy of the Dutch in the peace negotiations made it necessary, and this condition, as well as the previous demand for religious security, was added to the address. The House next proceeded to declare the existence of a standing army and the retention of certain Ministers to be grievances. Then it went on to attack the Duke of Lauderdale, a very unpopular member of the Government, who had formerly been a zealous Covenanter, but afterwards became a strong supporter of the King. These things were rather more than Charles could bear, and he at once prorogued the Houses (November 4th).

Charles changes his Ministers.

Before Parliament again assembled, some startling changes were effected. Shaftesbury was dismissed from the office of Chancellor, and the Great Seal was given to Sir Heneage Finch, under the title of Lord Keeper. Sir Thomas Osborne, soon afterwards created Earl of Danby, became Lord Treasurer. Buckingham was also driven from the King's councils ; Lauderdale, whom the Commons, when peremptorily dismissed, were just voting to be a "grievance," was compelled to confine himself in future to Scotch affairs ; and Arlington was obliged to adopt a fresh line of policy.

Firm action of Parliament.

The two Houses met on January 7th, 1674.[1] Charles again asked for supplies, chiefly to strengthen his position in the negotiations for peace. But the House of Commons, understanding that, according to the French

[1] In the reports for this session, we first meet with references to written speeches, which were disallowed. Mr. Mallet was reading a speech, when he was called to order. Sir Charles Harbord said the precedent was dangerous, and he (Sir Charles) had been

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conditions of peace, England was to aid in establishing Roman Catholicism in the Dutch towns, declared it a matter of conscience no longer to persevere in such an alliance; it also called for the extension of the Test Act, and the security of religion against the contingency of the King's death. As there was considerable apprehension of an aggressiveness amounting to the use of arms on the part of the Catholics, the Lords demanded that all Catholics who were not householders should be banished ten miles from London, and that during the session none of them should be allowed to come there without special permission. The Commons required that the militia should be kept in readiness to resist any tumultuous movements of the Papists or other malcontents within one hour after summons had been given in London and Westminster, and as regarded other places within twenty-four hours. Bishops and Commons were now united against what was believed to be the common danger—the advance of Popery.

Proceedings against Lauderdale, Buckingham, and Arlington.

The Lower House also resumed its proceedings against "evil counsellors," beginning with the Duke of Lauderdale. His conduct in Scotland, by which he had threatened England herself, was described as criminal. His zeal for monarchy in general was brought forward, and especially a remark he was alleged to have made in the Privy Council, that a royal edict was to be reckoned higher than an act of Parliament. The House unanimously resolved "That an address be presented to his Majesty to remove the Duke of Lauderdale from all his employments and from his presence and councils for ever, being a person obnoxious and dangerous to the Government." The Duke of Buckingham, the Zimri of Dryden's *Absalom and Achitophel*, was next proceeded against on various grounds: his influence with the King, corrupt taking of money, his scandalous life, etc. Twice heard in his own behalf, the Duke advanced

reprehended by the Lord Keeper for merely making use of heads in a paper. After considerable discussion Mr. Mallet was suffered to proceed, but the Speaker told him he could not be permitted to read in future.

nothing that told in his favour with the Commons, and a similar resolution was passed in his case as in that of Lauderdale. Then came the Earl of Arlington's case. The Earl was charged with being a vehement promoter of Popery, with having been guilty of undue practices to promote his own greatness, with having embezzled and wasted the treasure of the nation, and with having traitorously betrayed his public trusts. The accused defended himself, and being able to bring to bear considerable influence, the motion for his dismissal was defeated by 166 to 127 votes. By these proceedings the responsibility of Ministers to Parliament was once more completely demonstrated and established. Lauderdale, however, managed to retain his power for some years yet.

Liberty of the subject.

The Commons next dealt with the liberty of the subject, which had been greatly interfered with by the arbitrary proceedings of Clarendon and other Ministers. The Habeas Corpus Bill was passed to prevent the imprisoning of subjects in illegal prisons, or sending them to prisons beyond the seas, etc., without cause, measure, or relief. It was lost in the Lords, whither it was sent on several subsequent occasions, until, as we shall presently see, it ultimately became law.

Peace with Holland.

On January 24th, 1674, Charles laid before the two Houses proposals for a peace with Holland. The Treaty of Westminster was accordingly concluded on February 9th, and by this instrument important concessions were made to the English flag, the Dutch also pledging themselves to a considerable payment of money, while the possessions and districts out of Europe which either party had seized from the other were to be restored. From this time forward all rivalry between the two Powers, England and Holland, completely ceased ; and the two countries were destined to be drawn into still closer relations within the next few years.

The Prince of Orange.

At this time the Prince of Orange came into prominence. The Dutch had just elected him Stadtholder, Captain-General, and Admiral-General ; and he was now a personage of great importance in Europe. The eyes of

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many English members of Parliament were turned towards him, in consequence of the difficulties attending the succession to the British crown. Charles had no children; and James, Duke of York, who had married a Catholic princess, Mary of Modena, was himself an avowed Roman Catholic. The King favoured a marriage between the Prince and the Duke's eldest daughter as a security for the Duke himself during his lifetime, and for the throne generally; but the Prince's friends in the English Parliament dissuaded him temporarily against the marriage, assuring him that they would exclude the Duke's children from the succession, and declare him, the Prince of Orange, as grandson of Charles I., to be the next heir to the throne. All was in a state of dubiety, when Charles prorogued Parliament on February 24th, after a very short session. But the Commons had secured many important points against the King: they had successfully resisted his prerogative, broken up the alliance with France, firmly maintained the cause of Protestantism, and defeated the attempt to reintroduce Catholicism into England.

Venality in the Commons.

From another point of view this Parliament was not to be commended. Under the manipulation of Danby, it grew to be very venal. While the Commons were justly sensitive on the question of public grievances, and while they manifested a strong hostility to Popery, they yielded to corruption. Men like Sir Robert Howard and Sir Richard Temple became mere placemen; others, like Lee and Garraway, took money from the Court for dulling the edge of particular votes; while bribery amongst the rank and file was open and unblushing. Partly for this reason, and partly owing to the fact that the Country Party believed him to be as good a Minister in the interests of Protestantism as it was possible to obtain, the Earl of Danby was able to retain his hold of office for some years. As the influence of Arlington with the King declined, that of Danby grew. He was a careful Minister, and brought the revenue into tolerable order by an efficient supervision. Though a declared enemy to the

French alliance, he desired to govern without obtruding his views or offending the susceptibilities of any party, and he ended by pleasing none. But Danby was instrumental in bringing about the marriage of the Prince of Orange with the Princess Mary, and as this precipitated the Revolution and the Act of Settlement, it is a great service to place to his credit against many acts in his career which partook of an unconstitutional character.

Parliament and the French influence.

The constitutional questions in which the King was at strife with Parliament were by no means as yet determined. Though there were still many Republicans in the House and in the country, there was no desire or intention anywhere to overturn the monarchy; but there was a determination on the part of many besides the Republicans to limit the powers of the Crown and assert the rights and privileges of Parliament. The progress of events, however, was held in check by the French influence. That interest was still so strong that it was able to procure the adjournment of Parliament till long beyond the time at which it was expected to meet. Charles himself was willing to conclude degrading money bargains with the French, but at the same time he did not like the idea of not coming to a favourable understanding with the Parliament. So he told the French ambassador that he must give Parliament another trial, though he promised that it should not interfere with his plans, with his alliance with the French king, or with the succession.

The doctrine of non-resistance.

Accordingly, after a long interregnum of fourteen months, the two Houses met on April 13th, 1675.[1] A bill was brought forward early in the session against disaffected persons, and formulating the doctrine of non-resistance. This bill, which passed the House of Lords, imposed as a test to be taken by members of both Houses of Parliament, as well as all persons holding beneficed offices, a declaration that resistance to persons commissioned by the King was in all cases unlawful, and that they would

[1] This was the thirteenth session of the Long Parliament of Charles II., and not the fourteenth, as Ranke states.

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never attempt any alteration in the government in Church or State. This legislation was in accordance with Danby's views, and was promoted by him. It was covertly aimed against the Papists, and still more openly against the Dissenters; and it formed part of the Lord Treasurer's policy of playing off the Church party against the two sections of dissidents. But the House of Commons would listen to no measures against the Nonconformists; and as a protracted quarrel arose between the two Houses on another matter, the King was obliged at last to prorogue Parliament without seeing the test bills carried through. This mischievous and unconstitutional legislation therefore, which was intended to set the Country Party by the ears, deservedly failed.

Strange scene in the Commons.

An extraordinary scene, and one probably unparalleled, occurred during this session in the House of Commons. On May 10th the question was put whether an address should be presented to the King praying him to recall the forces from France, and the grand committee thereupon divided. The tellers differing in their account of the Yeas and Noes, some members called out, "Tell again," others, "Report," on which great disorder began. Gentlemen rose from their places and mingled in the pit; and hot and provoking discourses and gestures passed on both sides, especially between Lord Cavendish and Sir John Hanmer. Some said that Lord Cavendish's sword was half drawn out, but he was checked by Mr. Russell, who kept close to him. Others said that Lord Cavendish spat in Sir John Hanmer's face, but this was an exaggeration, owing to eagerness of speech. But it was visible to all, according to contemporary reports that Sir James Smith, setting his arms on his side, did in a rude manner make through the crowd, and jostled several, and came up to the table, where yet more hot discourses passed between him and Lord Cavendish, Mr. Stockdale, Mr. Sacheverell, and several more. Mr. Stockdale and some others set their feet upon the mace, which lay before the table, in the usual place at grand committees. The disorder continued for nearly half an

hour, the standers-by on the upper benches expecting fatal consequences, especially when such young gallants as Mr. Thynne, Mr. Newport, and several others leaped over the seats to join Lord Cavendish. But the Speaker, very opportunely and prudently rising from his seat near the bar, made his way at a resolute and slow pace through the crowd, and took the chair. The mace was still retained by the offending gentlemen, but at last being forcibly laid upon the table, all the disorder ceased, and the members went to their places. The Speaker's action in taking the chair, though not according to order, was generally approved, as the only expedient to repress the disorder. He maintained the dignity of the chair after that of the House was gone, and obliged every member to stand up in his place and engage his honour not to resent anything of that day's proceedings.

Privilege

The quarrel between the two Houses which prevented the passing of any bills during the session of 1675 arose out of a question of privilege. It appears that one Dr. Shirley, being cast in a lawsuit before Chancery against Sir John Fagg, a member of the House of Commons, preferred a petition of appeal to the House of Lords. The Lords received it, and summoned Fagg to appear before them. He complained to the Commons, who espoused his cause. They not only maintained that no member of their House could be summoned before the peers, but asserted that the Upper House could receive no appeals from any court of equity. This was a pretension which greatly curtailed the jurisdiction of the peers, besides being contrary to the practice that had prevailed during the whole century. The Commons sent Shirley to prison, but the Lords asserted their powers; conferences were tried, but no accommodation ensued. Four lawyers were sent to the Tower by the Commons for transgressing the orders of the House and pleading in this cause before the peers.[1] The peers held this

[1] During the debate on the commitment of these lawyers, some ladies were observed in the gallery, peeping over the gentlemen's shoulders. The Speaker, spying them, called out, "What borough

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arbitrary commitment to be a breach of the Great Charter, and ordered the Lieutenant of the Tower to release the prisoners; but he declined obedience. They then applied to the King, and desired him to punish the Lieutenant for his contempt. The King summoned both Houses; exhorted them to unanimity; and informed them that the present quarrel had arisen from the contrivance of his and their enemies, who expected by that means to force a dissolution of Parliament. Charles's advice had no effect; the Commons were as determined as ever; and the King, finding that no business could be finished, at length prorogued Parliament on June 9th.

A new Session.

The fourteenth session of Parliament began on October 13th, 1675. The King made a brief speech, in the course of which he candidly said, "I find, by a late account I have taken of my expenses, that I have not been altogether so good a husband as I might have been, and as I resolve to be for the future." But he added that he had not been so extravagant as the world had been led to believe. Lord Keeper Finch then demanded supplies to cover the loans which burdened the revenues, and to refit the navy. On the 18th a debate took place in the Commons on the loans and the King's debts. The loans were reckoned at £800,000, and the Government urged that it was necessary to meet them at once. The Opposition replied that Parliament had been opposed to the last war, and why should it now undertake its expenses? This would only be to maintain an expensive Court and a pernicious policy. Why should Ministers, under the circumstances, be granted free power of action by the relief of the revenues? It was known that Ministers leaned towards France, while Parliament supported the allies. The defence of the country was pleaded by the Government in vain. Par-

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do those ladies serve for?" to which Mr. William Coventry replied, "They serve for the Speaker's Gallery." Sir Thomas Littleton said, "The Speaker might mistake them for gentlemen with fine sleeves, dressed like ladies;" but the Speaker retorted, "I am sure I saw petticoats."

liament interpreted the vote to mean the support of France, and the proposal for the reimbursement of the loans was at last rejected, but by the narrow majority of 172 to 165 votes. The House was more pliable touching the navy, and voted £300,000 to build twenty ships; but proposed to entrust the administration of this money to the London Exchequer, and not to the Treasury. The Government, under the direction of the King, strenuously opposed this proviso, and in the end the expenditure was left in the hands of the Treasury, with threats of punishment if the money were not rightly used. But with the object of making it impossible for Ministers to engage in the European war otherwise than according to the will of Parliament, the Lower House now took an important step. It passed a resolution that the receipts from the Customs, originally destined for the navy, should be applied to that purpose. This provision was inserted in the bill for the new subsidies, with the necessary corollary that, unless the King accepted this appropriation of the Customs, the grant itself would become invalid.

Financial measures.

The quarrel between the two Houses arising out of the case of Shirley and Fagg was renewed with great bitterness this session. The Commons claimed by their action to be maintaining the rights of the people, while the Lords held that the declaration of the Lower House was contrary to the laws and the Constitution. The Commons ordered Dr. Shirley to be taken into custody for prosecuting his appeal, and the Lords again threw their shield over him. The most remarkable incident of the session was a speech delivered by the Opposition chief, Lord Shaftesbury, during the debate for appointing a day for the hearing of Dr. Shirley's cause. This speech "threw the Lords into a flame." The Earl began by saying, "Our all is at stake, and therefore you must give me leave to speak freely before we part with it." He then went on to declare himself a zealous defender of the rights of the Upper House, and that from the general point of view of the necessity for aristocratic institutions. Let the House

Important speech by Shaftesbury.

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of Commons or the gentry of England think what they pleased, there was no prince that ever governed without nobility or an army ; if they had not the one, they must have the other, or the monarchy could not long keep itself from tumbling into a democratic republic. The country must maintain its aristocracy if it did not wish to fall under a military power. The King was king by law, and "by the same law that the poor man holds his cottage." It would be unjustifiable if the Lords allowed themselves to be deprived of their right to the supreme judicature, for that was the life and soul of the House, and was just as good a right as any other in the country. "I therefore declare that I will serve my prince as a peer, but will not destroy the peerage to serve him." Shaftesbury then proceeded to attack vigorously the doctrine of Divine right. "This Laudian doctrine," he said, "is the root that produced the Bill of Test last session, and some very perplexed oaths, that are of the same nature with that, and yet imposed by several acts of this Parliament. In a word, if this doctrine be true, our *Magna Carta* is of no use; our laws are but rules amongst ourselves during the King's pleasure. Monarchy, if of Divine right, cannot be bounded or limited by human laws, nay, what is more, cannot bind itself; and all our claims of right by the law, or of constitutional government, all the jurisdiction and privilege of this House, all the rights and privileges of the House of Commons, all the properties and liberties of the people, are to give way not only to the interest, but the will and pleasure, of the Crown." In another part of his speech the Earl enunciated the right of resistance, and the privilege of each individual to defend his rights whensoever and by whomsoever they should be attacked. "If ever there should happen in future ages (which God forbid) a king governing by an army without his Parliament, it is a government I own not, am not obliged to, nor was born under." This was precisely the position taken up by Pym and others in Charles I.'s time. Shaftesbury's address, which seems to have been one of the ablest and most impassioned of

the time, struck a bold note, and created a profound sensation.[1]

Sittings of Parliament suspended.

Taking advantage of the hopeless want of agreement between the two Houses, Charles again prorogued Parliament on November 22nd. He did not go the length of dissolving it, for that would have necessitated the evil of new elections. Strictly speaking, in accordance with his understanding with France, he ought to have ordered a dissolution, but this difficulty was got over. Charles received his money from the French king, and what he did answered the purpose of Louis equally well. He suspended the sittings of Parliament for the long period of fifteen months (November, 1675, to February, 1677), and received 500,000 crowns for his action.

A Constitutional question.

When the Houses reassembled on February 15th, 1677, the question was agitating the public mind whether there was really a Parliament at all. The old act of Edward III. prescribed annual Parliaments, whereas the last prorogation had ordered the Houses not to meet for fifteen months. It was therefore held by many that the Parliament was no longer a Parliament. The Duke of Buckingham upheld this view in a vivacious speech in the House of Lords, alleging that if the King in this case broke the law, then there existed no law in England. He was supported by Shaftesbury, Salisbury, and Wharton, but the majority of the House inclined to the view that the old statute had been merely strained They held that at most the affair only amounted to a grievance ; and it would be impossible to declare subsequent Parliaments illegal because former ones had not been summoned. Buckingham and his supporters were required to ask pardon for their misdemeanour in speaking against the Parliament ; and Shaftesbury, who had been the most vehement, was ordered to do this kneeling at

[1] Ranke, to whose work generally it is impossible to award too high praise, by no means gives an adequate summary of this remarkable speech ; and he also attributes a wrong time to its delivery.

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the bar. But as the four lords declined to submit, they were sent to the Tower. After a few months three were set at liberty on petitioning the King; but Shaftesbury would not petition.

The Payment of Members.

The Commons agreed to the pecuniary demands of the Government, and voted £600,000 for the building of ships. Now, however, it was resolved, though not without much debate, that no decision about the appropriation of the Customs to the navy should be introduced into the money bill. During this session also the Lower House resolved to repeal the statute by which wages were paid to members of Parliament. Andrew Marvell is said to have been the last person who received these wages; and Edmund Waller pleaded for their retention, on the ground that some members were so poor, and some boroughs so rich, that to force men not to take wages would not be equal justice.

Protestant Securities and the Succession.

In the Lords a bill was introduced by the Lord Treasurer, with the Duke of York's consent, for securing the Protestant religion by educating the children of the royal family therein. It was again provided that the Prince should undertake no innovation in religion without the consent of Parliament; and there was an important proviso to limit the royal prerogative in the appointment to bishoprics. The Test Act was to be extended to the Crown; the oath against transubstantiation was to be tendered by the Primate to the successor to the throne, and if he refused to take it, the right of presentation to the vacant ecclesiastical dignities was to be held by a commission, who were to select three names, from which the Prince must choose one. The bill was variously regarded, so that it came to be described as a Janus-like, or two-faced measure, being no better than a compromise between the Church and the Duke, by which the latter passed a sort of fine to the former for being of what religion he pleased. It passed with little difficulty in the Lords, but although it weathered its second reading in the Commons, this was as far as it got, for it died of neglect, "the committee either disdaining or not

daring publicly to enter upon it." A second bill came down from the Lords for preserving the Protestant religion, but on examination it was found to belie its title and to relieve the Catholics. In the Commons no man could be found to utter a word in its favour, and Sir Harbottle Grimstone said, "We may as soon make a good fan out of a pig's tail, as a good bill out of this." It was rejected, with the added censure, "because the body of the bill was contrary to the title," this marked procedure being purposely at variance with the usual rules of intercourse between the two Houses.

Foreign alliances.

Prolonged debates took place in the Lower House on the subject of the King's foreign alliances. The King was advised to enter into the Grand Alliance, and to act against France, upon which Charles was furious. Still the Commons held firm, and in an address declined a further supply until his Majesty's alliances were made known. But the King made no secret of his antipathy to the people's representatives. When some one had spoken to him of the sympathies of Parliament with the allies, he threw his handkerchief into the air, exclaiming, "I care just that for Parliament."

Violent scene in Parliament.

The upshot was that on May 28th Parliament was yet again adjourned, and a violent scene was enacted in the Commons when the Speaker declared the King's will. The Speaker adjourned the House to July 16th, without naming place or hour, and then suddenly sprang out of his chair. He was called back, and a struggle for the mace took place, but the Speaker, being supported by his friends, got away, and saw the mace secured and borne before him. He was followed by reproachful speeches, and condemned for playing the dictator, like the King. Next day Charles's speech on adjourning the Houses, which contained severe strictures on the Commons, was published in the *Gazette*. This was the first speech of the kind which had appeared in the official journal, and the intention in publishing it evidently was to hold up the members as "refractory and disobedient subjects, who had lost all respect for majesty."

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The Houses were again prorogued from July 16th to December 3rd, and from the latter date to the following January 15th. Before they again actually met for business, the Prince of Orange married the Lady Mary, elder daughter of the Duke of York by his first wife. In agreeing to this union, Charles hoped to allay the serious discontent which prevailed in England, and to strengthen his own position. The marriage was a great surprise for the French king, and a vigorous war against him by England and the Allies was looked forward to. But Charles had no such intention. It is true that when Parliament met in January, 1678, he announced the conclusion of a treaty with Holland, and that he intended to enforce peace by arms if he could procure it in no other way. This somewhat pacified the Commons, who in February resolved to support the King with money in behalf of the new alliance for resisting the French supremacy. It was further agreed that ninety ships should be equipped, and thirty-two regiments ; and that a million pounds should be raised by the imposition of a poll-tax, from which no one should be exempt save those in actual receipt of alms. At the same time French merchandise was prohibited.

The Orange marriage.

French negotiations.

At this time began a series of negotiations between the popular party in England and the French king. These negotiations have been severely criticised, but due weight should be given to their origin. Lords Russell and Hollis treated with Louis, through his ambassadors Barillon and Rouvigny, with the object of drawing over France from the side of King Charles. By this means they would frustrate Charles's designs, and secure the disbanding of the army. The Commons distrusted the King, and believed that his real object all through his relations with Louis was to make himself master of a considerable army. The leaders of the Opposition including Russell, were most desirous of seeing the existing Parliament dissolved, believing that its successor must greatly strengthen their hands. The dissolution could only be achieved through the influence of the

French king, and hence these otherwise anomalous negotiations. A strong attack would then follow upon the Duke of York and the Popish faction, and the fall of Danby might also be compassed, though the ruin of the Lord Treasurer was not the leading object of the combination. Russell and Hollis, who were men of high character and integrity, had really great public ends in view, and with them there is no question of a money consideration having passed; but at a somewhat later date several leading members of the Opposition received grants of money from the French king. Unfortunately, bribery was too much practised in the days of Charles II.

Treaty between Charles and Louis.

Louis kept his finger both upon the pulse of the King and that of the popular party in England. In May, 1678, a private treaty was concluded between the French and English kings, by which Charles agreed to maintain a neutrality if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband the greater portion of his army, and not to call Parliament together for six months. Meanwhile Holland asked at what date the eight large towns which France had agreed to restore to her would be surrendered, and France replied, not until the possessions taken from Sweden by the Elector of Brandenburg had been given back. This did not suit the Dutch, and England also determined to resist the French demands. Sir William Temple was sent over to Holland, and a new treaty was signed on July 26th, by which the two Powers demanded from Louis within a fortnight the abandonment of his lofty pretensions. This changed the aspect of affairs; the friends of France in the English Parliament called upon Louis to give way, and in August the treaty of Nimeguen was concluded between France and the United Provinces.

The Popish plot.

Parliament had been adjourned from July 15th to August 1st, and then to the 19th of the latter month. From thence it was again prorogued to October 1st, and yet again to October 21st. Before the Houses finally met for business, the country was convulsed by the news

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of the Popish plot. It was an imaginary conspiracy, though doubtless there were projects in vogue by the Roman Catholics for an attempt against the Government. The "plot," however, was chiefly concocted in the brain of Titus Oates, a discredited clergyman, who had been accused of perjury and other crimes. Failing to obtain favour either with Anglicans or Romanists, he devised the story of the Popish plot, which soon found credence with the populace owing to their fear and distrust of Popery. Oates deposed before a magistrate, Sir Edmondbury Godfrey, that he knew the particulars of a Papist scheme by which the King was to be assassinated, a Roman Catholic Ministry appointed, and a massacre of the Protestants prepared with the assistance of a French army. Several circumstances accidentally lent force to his statements, and when, a few days afterwards, Godfrey, the magistrate before whom Oates had sworn, was found murdered on Primrose Hill, a universal panic seized upon the nation. The absurdest stories invented by Oates and the informers who followed in his train were now accepted without question.

Proceedings against the Catholics.

The matter could not be suppressed in Parliament; and in opening the seventeenth session on October 21st the King referred to it, while the Chancellor spoke of the infamous methods by which it was intended to introduce a strange religion into the country. The Commons resolved "That there hath been, and still is, a damnable and hellish plot carried on by Papist recusants for assassinating the King, the subverting of the Government, and for rooting out the Protestant religion." Ministers published a proclamation by which all Catholics were banished from Westminster and London, save such householders and fathers of families as would take the oaths of allegiance and supremacy. Military patents were withdrawn from the Catholics, and the King was requested to banish all such from his household. The life of Coleman, secretary to the Duchess of York, was sworn away; and on the evidence of Oates, Dangerfield, Carstairs, and Bedloe, many leading Roman Catholics were tried, convicted, and

imprisoned or executed. Oates even went so far as to swear that he had heard the Queen give her consent to the King's murder. Trials followed each other in rapid succession.

The public safety.

The two Houses held a conference on November 1st for the purpose of considering the means to be adopted for the protection of the King, the Constitution, and the Protestant religion. On the 2nd Lord Shaftesbury declared from his place in the upper chamber that there was only one means of saving the King and the kingdom, and that was to ask the King to dismiss the Duke of York from his councils. Halifax, who was now banded with Shaftesbury and others against Lord Treasurer Danby, supported the motion, as did also Barlow, Bishop of London; and it was said that no one soon would know who was actually king in England. In the House of Commons, Lord Russell moved on the 4th that the Duke of York should be removed from the King's presence and councils. Secretaries Coventry and Williamson opposed this, urging that such a course would drive the heir to the throne to a union with the French and the Catholics, which they were anxious to avoid. Matters were temporarily adjusted by the withdrawal of the Duke for a time, and of his own accord, from the sittings of the Privy Council. Charles then assured the two Houses that "he was ready to join with them in all the ways and means that might establish a firm security for the Protestant religion," not only during his own life, but in the future.

Bill for disabling the Papists.

The Commons now passed a bill for "disabling Papists from sitting in either House of Parliament." This measure went to the Lords, and owing to the prevalent religious terror, it passed that House also. But their lordships carried a proviso exempting the Duke of York from the operation of the act. The Duke spoke on this proviso with great earnestness, and with tears in his eyes. He referred to his duty to the King and his zeal for the nation, and solemnly protested "that whatever his religion might be, it should only be a private thing between God and his own soul; and that no effect of it

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should ever appear in the government." The proviso was carried for him by a few voices. Contrary to all expectation, the proviso also passed the Commons, but by a majority of two votes only, the numbers being 158 to 156.[1]

Military affairs.

The House of Commons now took important action with regard to military affairs. It passed a resolution for preserving the peace of the kingdom by raising the militia and continuing them for forty-two days. This would have given the Lower House the control of about sixty thousand men, whom the King could not disband for six weeks, and he peremptorily rejected the resolution. The Commons became angry, and saw in this another proof of the influence of the Duke of York, who did not wish the suppression of the Catholics. Algernon Sidney and his friends now negotiated with the French ambassador, and their views prevailed. The Commons, finding that the money voted for the disbandment of the troops had been employed instead in keeping them together, took the power of disbursement out of the hands of the Treasury and placed it in those of the Exchequer of London.

Impeachment of Danby.

It was now evident that the power of Danby was waning, and that rapidly. He had quarrelled with Ralph Montague, recently English ambassador in France; and hearing that Montague intended to accuse him, he ordered the seizure of his papers. The Commons interfered, however, and ordered Montague's papers to be produced in the House. Among them were letters in which the acceptance of the Peace of Nimeguen was made dependent on a payment of six millions, while a desire

[1] On the same date there was a curious debate touching Parliamentary manners. Sir J. Trelawney called Mr. Ash "a rascal," and a breach of the peace ensued. The Speaker said, "I must tell you who they are that have given blows in this House," and then he named the offenders. A motion was made to expel Sir J. Trelawney, but this was lost, and he was sent to the Tower instead for the remainder of the session. Mr. Ash was reprimanded.

also was expressed to make the King independent of Parliamentary grants. Danby's impeachment was demanded, and it was in vain that he produced letters by Montague which put a different complexion upon affairs. The House of Commons was enraged with the Minister on grounds of finance and prerogative ; and although Danby was actually a strong opponent of France and of Popery, and was in favour of a union of sovereignty and hereditary succession with a Parliamentary constitution, he was credited with the exaltation of the monarchy and with friendliness towards France and the Papists. He was consequently accused of high treason, and a resolution for his impeachment was carried by 179 to 116 votes. He defended himself with great vigour in the Lords, though he failed to answer some of the charges against him. The Upper House did not consider the impeachment justified, but this only further incensed the Commons, and Danby saw that his only hope was in a dissolution of Parliament.

Dissolution of the Pension Parliament.

The King was in a great difficulty, not only with his Minister, but with his brother, the Duke of York. Feeling at last there was but one solution, he resolved upon that step from which he had hitherto shrunk, and after proroguing Parliament from December 30th by proclamation until January 24th, 1679, on the latter date he declared it to be dissolved. A singular but active career was that of the Pension Parliament, or the Long Parliament of the Restoration. It began with a fulsome adulation of Royalty and stern reprisals upon the Commonwealth men ; but by degrees its ardent devotion to the royal prerogative cooled down, and a jealous watchfulness over Parliamentary rights succeeded. It thoroughly established Protestantism, gained a firmer hold upon the finances, declared the Parliamentary responsibility of Ministers, and asserted the limited nature of the monarchy. Charles II. was jealous of its powers, which he was assured were gradually sapping his kingly attributes ; and by its dissolution he looked for the severance of the Gordian knot of his troubles.

CHAPTER III.

CHARLES'S LATER PARLIAMENTS.

The Elections.

The King and the Country Party were at length to test their strength at the polls. The Court put forth all its energies to sway the elections in its favour, but it failed to shake the popular belief that liberty, property, and religion were all at stake. Anti-Papist ideas penetrated into the remotest corners of England, and the Presbyterians and other opponents of the Court carried on a propaganda which proved to be remarkably successful. Charles saw what was coming, and resolved to break the fury of the storm. Abandoning for the time his indolent attitude, he acted with promptitude and vigour, and, amongst other measures, sent the Duke of York into friendly banishment at Brussels.

New policy of Charles.

When the election returns began to come in, the King saw that he could not depend upon more than a fifth of the votes which he had hitherto counted in his favour. But in order to show that he did not desire to fetter the free action of Parliament, he began to disband the army, and also announced the impending dismissal of Danby from his councils, a dismissal which he intended to soften by advancing the Minister to the dignity of a marquis. Moreover, as soon as Parliament met on March 6th, 1679, the Government put forward a strong anti-Popish policy, and asked for supplies to carry it out. But all was of no

avail. The Country Party in the Commons was exceedingly strong, and it distrusted both King Charles and King Louis. Seymour, who had quarrelled with Danby, was re-elected Speaker, but the King rejected him. A dispute arose which was ended by a short prorogation; and when the House met again on March 25th, Serjeant Gregory was elected Speaker, on the motion of Lord Russell.

The Impeachment of Danby.

The Lower House now took up again the impeachment of Danby. The King had granted his fallen Minister a general pardon, but the Commons refused to acknowledge it in the case of a person already accused. Conferences ensued with the Upper House, and ultimately on April 14th the Lords agreed to the bill of attainder against the Earl, and he was ordered to surrender himself for trial. Danby had acted under the King's express orders in making a bargain with France. The action was most perfidious, for only five days before the secret agreement with Louis an act had been passed to raise money for carrying on the war. Danby considered that he was exempt from all consequences, because everything that he had done was under the King's direction; but, as Hallam maintains, he was responsible as a statesman for his own acts, and the Commons exercised a constitutional right in his impeachment. The prosecution established the modern theory of the Constitution that a Minister is "answerable for the justice, the honesty, the utility, of all measures emanating from the Crown, as well as for their legality." He has no right to shelter himself behind the throne by pleading obedience to the orders of his sovereign; resignation is always open to him if he cannot conscientiously identify himself with any particular measures; and in these days a Minister would never think of advancing the plea put forward by Danby. This Minister did not deserve penalties for high treason, but the point which his case gives rise to is not so much the amount of the Minister's guilt as his amenability to Parliament.

Danby's answer.

On being required to answer the charges against him, Danby pleaded the King's pardon, but the Commons

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held this to be illegal and void, and demanded judgment from the Lords against him. They further denied the right of the bishops to vote on the validity of his pardon, and called for the appointment of a committee of both Houses to regulate the form and manner of proceeding on the impeachment, as well as on that of five lords accused of participation in the Popish plot. The Lords agreed to a committee, but maintained the right of the spiritual lords to vote in capital cases until final judgment should be pronounced. The Commons protested, but, as the prorogation shortly took place, the differences were left unadjusted. What is chiefly noted by constitutional historians is that the principal point in controversy, whether a general or special pardon from the King can be pleaded in bar of an existing impeachment by the Commons, never came to a decision. As for Danby himself, he was committed to the Tower in April, 1679, and remained there until February, 1684, when he was released on bail, and finally discharged in May, 1685. But Parliament sanctioned one principle in connection with this case—viz., that impeachments and other proceedings are not abated by a dissolution, but may be continued from one Parliament to another. It is true that this principle was temporarily abandoned in 1685, when the House annulled the proceedings against the impeached lords; but the question arose on several subsequent occasions, and the continuance of impeachments was finally voted by large majorities in both Houses of Parliament in the session of 1791.

Continuance of Impeachments.

Council of Thirty.

After the dismissal of Danby, the government was entrusted to a Council of Thirty, with Shaftesbury as Lord President. Temple was the father of this scheme, but it did not work very well, and certainly did not long please the King. The consequence was that an inner clique was formed, consisting of Temple, Sunderland, and Essex, Halifax afterwards joining it. Charles thought this council a more wieldy instrument for impressing his views upon the attention and acceptance

of Parliament. At a meeting of the two Houses on April 30th, the Lord Chancellor proposed a series of resolutions for securing the Protestant religion, even under a Catholic successor. But the Commons declined to accept the King's overtures. The old antipathy against the Duke of York grew stronger, and Lord Russell gave vent to the popular feeling in Parliament when he said that if the Duke ascended the throne, "men must make up their minds either to become Papists, or to be burnt." Notwithstanding the pleas of Secretary Coventry and Lord Cavendish for leaving matters as they were, on May 7th the House of Commons resolved "That a bill be brought in to disable the Duke of York from inheriting the imperial crown of this realm." It was read a second time on the 21st, and committed by 207 votes to 128, but, as Parliament was prorogued a few days afterwards, no further progress could be made with the measure.

The Habeas Corpus Act.

The session of 1679 has been made memorable in history by the passing of the Habeas Corpus Act. The question had been agitated from the earliest days of the Constitution, in consequence of violent and irregular seizures and imprisonments, and now the law upon the subject was to assume definite and permanent shape. The Habeas Corpus Act, as passed on May 27th, 1679, enacted that any judge must grant the writ of habeas corpus when applied for, under penalty of a fine of £500; that the delay in executing it must at the furthest not exceed twenty days; that any officer or keeper neglecting to deliver a copy of the warrant of commitment, or shifting the prisoner without cause to another custody, shall be fined £100 for the first offence, and £200, with dismissal, for the second; that no person once delivered by habeas corpus shall be recommitted for the same offence; that every person committed for treason or felony is to be tried at the next assizes, unless the Crown witnesses cannot be produced at that time, and that if he is not indicted at the second assizes or sessions, he may be discharged; and that no subject may be imprisoned out of England. This great legislative act is the most

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important safeguard of his personal liberty which the Englishman possesses.

Parliamentary interim.

Parliament was prorogued to August 14th, but before that date it was dissolved by proclamation. Among other things, it had shown too strong a zeal against Danby. The King was beset with difficulties whether he called a new Parliament or kept on the old, but he finally decided upon the former course, with a lingering hope that the elections would turn in his favour. During the Parliamentary interim many important incidents occurred. The Duke of York came over from Brussels, and prevailed on the King to disgrace Monmouth and to deprive him of his command, while he himself obtained leave to retire to Scotland, a step taken to secure that kingdom in his interests. Essex, disgusted by the King's policy, resigned the treasurership, and Halifax and Temple practically withdrew from the royal councils. Hyde succeeded Essex, and Sunderland and Godolphin also came into favour. The elections went strongly for the Country Party, for the populace were as deeply incensed as ever against the Duke of York and the Papists. The King now tried many expedients. He dismissed Shaftesbury from the Presidency of the Council, and the meeting of Parliament was put off from one period to another.

The "Meal-tub Plot."

Meantime the public excitement was fanned by the pretended conspiracy known as the "Meal-tub Plot." It was fabricated by an informer named Dangerfield, a man of profligate life, who hoped to emulate the infamous doings of Oates and Bedloe. Dangerfield affirmed that the Presbyterians were conspiring to raise an army and establish a republic. Credence was at first given to his statements, but on the imposture being discovered he was committed to Newgate, when he turned round, and asserted that the alleged conspiracy had been concocted by the Papists to hide a real Popish plot, which had for its object the murder of the King. He declared that the papers relating to this plot were concealed in a meal-tub in the house of Mrs. Cellier, a Roman Catholic lady. Mrs. Cellier and Lady Powys were tried for the alleged

plot, but acquitted; and Dangerfield died miserably a few years later. At the same time a triumphant tour made by the Duke of Monmouth through some portions of England agitated the Court party.

Whigs and Tories.

Great pressure was put upon the King to call Parliament together. Seventeen peers and many important corporations petitioned in this sense. Their example was followed by petitioners of all classes, and in great numbers; and all that the Church and Court could do was to get up counter-addresses to the King, supporting his prerogative and expressing the deepest abhorrence of those who endeavoured to encroach upon it by prescribing to him any time for assembling the Parliament. The nation was thus divided into two camps: the Petitioners and the Abhorrers. The year 1679 is also remarkable for the first use of the party names of Whig and Tory—though the germs of both parties had long existed. The Court party reproached their antagonists with their affinity to the stern Covenanters of South-western Scotland, in connection with whom the term "Whig" was originally used; and the Country Party found a resemblance between the courtiers and the Popish banditti in Ireland, the appellation of Tory being derived from an Irish word, meaning to pursue for the sake of plunder. So the word "Tory" was used to denote the opponents of the Exclusion, the Duke of York being regarded as the secret protector of the Irish rebels. From this time forward the two great opposing political parties were known by the names, thus singularly derived, of Whigs and Tories.

A new Parliament.

After repeated prorogations, the new Parliament met for the despatch of business on October 21st, 1680. The King, with the crown on his head, opened the Houses in person, and, in the hope of impressing the Commons in his favour, announced that he was fully resolved to maintain the Protestant religion "against all the conspiracies of our enemies." He would concur in any new remedies proposed consistent with preserving the succession of the Crown in its due and legal course of descent. He was thus anxious to obtain favour with Parliament, and yet to

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protect his brother. But there was wide-spread distrust of the Papists, and Lord Russell, now the most popular man in England, said, "This Parliament must destroy Popery, or it will destroy us, and all that is near and dear to us." Upon his lordship's motion, the Lower House resolved unanimously that it ought to proceed effectually to suppress Popery and prevent a Popish successor. On October 27th the Commons passed these further important resolutions: "That it is, and ever hath been, the undoubted right of the subjects of England to petition the King for the calling and sitting of Parliaments and redressing of grievances; that to traduce such petitioning as a violation of duty, and to represent it to his Majesty as tumultuous or seditious, is to betray the liberty of the subject, and contributes to the design of subverting the ancient legal constitution of this kingdom and introducing arbitrary power; that a committee be appointed to inquire after all such persons that have offended against the right of the subject." These strongly-worded resolutions were aimed directly at the Church and Court party. Sir Robert Cann was expelled from the House for having declared that there was no Popish plot, but a Presbyterian plot; and the same fate befell Sir F. Withens for promoting an address declaratory of abhorrence of the petitions for the assembling of Parliament. Withens received his sentence at the bar, upon his knees. A Bristol clergyman named Thompson, who had traduced the memory of Hampden, spoken disrespectfully of Queen Elizabeth, and insulted the petitioners for a Parliament, was brought up and compelled to find security for answering to an impeachment on these charges. A Devonshire gentleman named Stawell, however, had the courage to refuse compliance with the Speaker's warrant; and the Commons, rather than risk an appeal to the ordinary magistrates, allowed his contumacy to go unpunished.

Its vigorous action.

Votes to be printed.

The House of Commons now resolved, for the first time, that its votes should be printed, after being perused and signed by the Speaker.

A great debate arose on November 2nd with regard to the proposed exclusion of the Duke of York. Colonel Titus moved for the appointment of a committee to draw up a bill disinheriting James, Duke of York. Sir F. Winnington said, "If any man will stand up and say that the Duke is not a Papist, it will be a great comfort to us all here and to all England; but the Duke's being a Papist and the hopes of his coming such to the throne is the occasion of all our misfortunes." Seymour and others, however, held that to disinherit the Duke for his religion was not only to act according to Popish principles, but to give cause for a war with all the Catholic princes of Europe, which must necessarily lead to the grave evil and danger of a standing army.

The Duke of York.

But there was a great preponderance of feeling in favour of the Exclusion Bill, which was accordingly brought in. During the debate on the first reading, Mr. John Hampden expressed the convictions of many both in and out of Parliament when he averred that he supported the bill because the opinions and principles of the Papists tended to the alteration of the government and religion of the nation and the introduction of superstition and idolatry and a foreign and arbitrary power. The Duke's religion alone was not a sufficient cause, but the welfare and safety of the country. The bill passed through its various stages, and on November 15th was conveyed to the Upper House by Lord Russell, who was accompanied by a goodly number of fellow-commoners, and by the Lord Mayor and various City dignitaries. The debate in the Lords was of an important and exciting character. The King was present, and nearly the whole of the House of Commons were spectators. The oratorical contest lay chiefly between Shaftesbury, who argued for the bill, and Halifax, who was against it; and the latter appears to have gained the honours of the debate. Halifax spoke with great wit and eloquence, making so powerful a defence that the House was persuaded to throw out the bill. This was done by 63 to 30 votes. In the majority were fourteen bishops.

The Exclusion Bill.

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The King and the Commons.

The King now asked Parliament for assistance in saving Tangiers, but the Commons resolved that nothing could be done in this matter when a cloud, which had long threatened England, was ready to burst over the land. In the words of one of the members for London, Sir Thomas Player, they entreated the King that he should not for the sake of one man (his brother) destroy three kingdoms. The Commons were exasperated against Lord Halifax, formerly the opponent but now the defender of the Duke of York, and called upon Charles to dismiss that statesman from his presence and from his councils. The King replied that he would dismiss neither Lord Halifax nor any other Minister unless his misdemeanours were proved to him. Parliament was not able to perceive that Halifax supported the hereditary right of the Duke in the interests of the Prince of Orange, towards whom his eyes were already turned.

Trial of Lord Stafford.

The trial of Thomas Howard (Lord Stafford) was now proceeded with by the House of Lords. This Catholic nobleman had for some time been lying in the Tower. The chief witnesses produced against him were Oates, Dugdale, and Turberville. Oates swore that Stafford had received a patent as Paymaster-General in the Popish army; and the others affirmed that he had hired them to kill the King. Stafford denied all the accusations, but he was found guilty, and there was considerable astonishment when it became known that the majority included four members of the Howard family. Charles was not convinced of Stafford's guilt, but there was an overwhelming feeling against the accused, and he was executed on December 29th.

Royal prerogative curtailed.

The Lower House did not intend to drop the Exclusion Bill. It called for the King's approval of the measure, but Charles replied by citing the decision of the Lords. The Commons were ready to accept this view on the understanding that they could proceed by impeachment and condemnation; but the King was well aware that this wider policy would embrace within its folds the Government as well as the Duke, and thus lead to other

measures. In the Lords it was demanded that the posts of command in the Tower, at Hull, Plymouth, and Portsmouth, should only be filled up with the approval of Parliament; and those of the Duke of York's friends who were most attached to the King were directly attacked. Shaftesbury declared that if the proposal found no hearing in the Upper House, its echo would be heard in the Lower; and the Commons justified his prediction by demanding that henceforth all the posts in the administration, the courts of justice, and the army, should be filled only by men of whose devotion to the Protestant cause there was full conviction. On this understanding they were prepared to support the King in carrying out his alliances so far as these tended to the advantage of Protestantism—a restriction which in itself pointed to Parliamentary supervision of the King's action. Other acts in curtailment of the royal prerogative were foreshadowed, and a resolution was passed by the Commons to call to account any one who should advance money to the Government on any branch of the revenues. They also sent up articles of impeachment against Edward Seymour (Privy Councillor), Lord Chief Justice Scroggs, and the Earl of Tyrone.

Parliament dissolved.

On January 7th the King, by message, refused his consent to any bill of exclusion against his brother. The Commons passed an address calling for the removal of Lord Halifax, Mr. Laurence Hyde, and others from his Majesty's councils, and on the 10th ordered an address for the restoration to favour of James, Duke of Monmouth. The King was now impelled to more decided action of some kind. He was convinced that by dissolving Parliament he should secure the support of France; so on the day last named, January 10th, 1681, he went down to the House of Lords and prorogued Parliament till the 20th. On the 18th, however, he formally dissolved it.

Petitions to the King.

It was the attitude of the city of London, which petitioned for the sitting of Parliament on the 20th, that caused Charles finally to decide upon dissolution.

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Offended with the capital, and trusting to meet with better success by a removal, he appointed Oxford to be the place of meeting of the new Parliament. This decision only deepened the alienation between the King and his London subjects and an influential body of the peers. A petition was drawn up by sixteen lords showing that previous Parliaments which had been held away from the metropolis had proved fatal to the kings who were so ill-advised as to call them, and had been followed with great mischief to the whole nation. The memorialists prayed that Parliament might sit, as usual, at Westminster. The King frowned upon the petitioners, and persisted in holding the Parliament at Oxford, whither he repaired with great state on March 14th. The members for London were accompanied by a body of well-armed horse. They wore ribands in their hats, bearing the words, "No Popery! No slavery!" Other members appeared armed, and altogether, says Echard, "the manner of their assembling looked more like the rendezvous of a country militia, than the regular meeting of a Parliament." The new elections had yielded a great majority in favour of Protestantism and Parliamentary freedom, and Charles had little to expect from the meeting of the assembly he had convoked.

The Oxford Parliament.

This Oxford Parliament was the fifth and last Parliament of Charles II. It met on March 21st, 1681, the gallery at the Public Schools being prepared for the Lords, and the Convocation House for the Commons. The King in his opening speech complained of the "unwarrantable proceedings of the last House of Commons," and repeated his former declarations with respect to home and foreign affairs. Touching the succession, he could not change his views, because without the maintenance of the safety and dignity of the monarchy neither religion nor property could be preserved. But he would be glad to remove all reasonable fears of a Popish succession, and would listen to any expedients by which the Protestant religion might be preserved, and the monarchy not destroyed.

The Commons, however, were not won over, and in the Upper House the question of the succession was brought before the King in a paper handed to him by Lord Shaftesbury, which advised him to recognise the Duke of Monmouth as his successor. Charles replied that while he could wish for nothing more than legitimate children, one of whom might succeed to the throne, instead of the Duke of York and his children, yet nothing in the world should induce him to do a thing contrary to all law.

The Succession.

The question of bringing in the Exclusion Bill was proceeded with in the Lower House, and, during the debates, what may be called the regency expedient was raised. On March 26th Sir John Ernly, who held an important post in the Government, suggested a compromise whereby the succession to the throne would be separated from the succession to the administration, the Duke of York being allowed to reign, while the Princess of Orange should be regent. Mr. Bennet (member for Shaftesbury) thought that expedients were only Jesuit powders for an ague, whereas their disease was pleurisy, and they must let blood. Sir William Pulteney said he had express directions from his Westminster constituents to adhere to the Bill of Exclusion. Sir William Jones delivered a powerful speech against the expedient, on the ground that if it passed, and the Duke had a right to be king, he could not be lawfully kept from the administration of the government. The debate ended by the appointment of a committee to draw up and bring in the Exclusion Bill.

The Regency expedient.

While the measure was pending, the two Houses became involved in a constitutional quarrel. One Fitzharris, an Irish Papist, had been arrested for a libel upon the King and his family, and Charles had transferred his trial to the Court of King's Bench. Fitzharris had had interviews with the King through Lady Portsmouth; and his statements concerning the Popish plot threatened to lead to unpleasant revelations about individuals in high positions. The Commons impeached Fitzharris of high treason, but the impeachment was rejected by the Lords,

Quarrel between the Houses.

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who directed that he should be proceeded against at common law. The Lower House denied the right of the Lords to come to this decision. Sir William Jones said the Commons never had owned, and never would, that the lords spiritual had power to judge of an impeachment in capital matters. He called upon the House to assert its right of impeaching a commoner at the Lords' bar, citing as a precedent the case of Lord Chief Justice Scroggs. It was ultimately resolved "That it is the undoubted right of the Commons in Parliament assembled to impeach before the Lords in Parliament any peer or commoner for treason or any other crime or misdemeanour, and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice and a violation of the constitution of Parliament." The Commons further decided that any civil law-court which should dare to deal with the case of Fitzharris should be answerable to them for its action. When the Lords rejected Fitzharris's impeachment, a protest was signed by twenty peers—including Shaftesbury, Essex, Sunderland, Bedford, Kent, Monmouth, Grey, and Salisbury—to the effect that it had been in all ages an undoubted right of the Commons to impeach before the Lords any subject for treason or any crime whatsoever. Certainly such impeachments of commoners for high and capital crimes had taken place; and after the Revolution the principle was more clearly laid down and acted upon.

The right of impeachment.

The Parliament dissolved.

The Exclusion Bill was taken up again, but as the Commons were inconveniently housed for their debates, they made representations to the King, who personally looked out a more fitting meeting-place for them. With his usual dissimulation, however, he had already resolved to put an end to their meeting altogether. The temper of the House displeased him greatly, and he had come to the conclusion to dissolve it. On March 28th Sir William Jones was engaged in arguing the right of the Commons to impeach commoners in Parliament, when Black Rod knocked at the door, and gave notice that the King demanded the attendance of the members

immediately in the House of Lords. Burnet says that Charles very suddenly, and not very decently, went to the Upper House, the crown being carried between his feet in a sedan. When the Commons had arrived, the King delivered this short speech : " My lords and gentlemen, that all the world may see to what a point we are come, that we are not like to have a good end, when the divisions at the beginning are such, therefore, my Lord Chancellor, do as I have commanded you." The Lord Chancellor then at once dissolved the Parliament, and his Majesty went off with such great haste to Windsor, " that it looked as if he was afraid of the crowds that this meeting had brought to Oxford."

Declaration by the King.

Charles published a declaration on April 8th, in which, after reciting all the undutiful behaviour of the last three Parliaments, he still assured his people that nothing should ever alter his affection for the Protestant religion as established by law, nor his love to Parliaments, for he would still have free Parliaments. This intimation was never acted upon, and the King's declaration was ably and trenchantly answered by Sir William Jones in his *Just and Modest Vindication of the Proceedings of the Two Last Parliaments of King Charles II.* Having got rid of his Parliaments and asserted his personal authority, Charles now applied to the King of France for his wages, and it was agreed that during the next three years the sum of five millions of French livres should be paid to England. France demanded in return that England should gradually withdraw from the Spanish alliance, and that Charles should not allow himself to be drawn into hostilities against France.

Parliament ceases to be summoned.

Practically France took the understanding to mean that the English Parliament would cease to be summoned, and it was an actual fact that for four years the Commons of England were not again called together.

Arbitrary action against Protestants.

A reaction against the Whigs and Protestants now set in, and even Shaftesbury was aimed at. Perjured witnesses, encouraged by the Court party, brought charges against this statesman, and alleged that a paper had

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been found in his cabinet (though not in his hand) containing the sketch of an association for limiting the power of the King. The grand jury of London threw out the indictment by returning a writ of *Ignoramus*. But while Shaftesbury himself escaped, the abortive proceedings and the general hostility of the capital towards himself were used by the King to humble London. The Court of King's Bench took away its charters, and they were not restored until they had been so shorn that the corporation became little more than the creature of the sovereign.

The Rye House Plot.

England now soon rang with the news of the great Whig conspiracy, or the Rye House Plot, as it was termed. Many distinguished men, including Shaftesbury, Monmouth, Russell, Essex, and Algernon Sidney, gave in their adhesion to the plan for resisting despotism, if necessary, by force of arms. Lord Howard betrayed these leaders, who favoured a bloodless revolution. Some other conspirators, however, of a lower order, contemplated murder. They proposed to block up the road near the Rye House, on the Newmarket road, and to shoot the King on the occasion of one of his visits to Newmarket. The plot failed, because in April, 1683, Charles returned to London from Newmarket a week earlier than he had intended. Two men, named West and Rumsey, turned King's evidence, and a third one, Shepherd, implicated Monmouth, Grey, and Russell. Monmouth fled, and Grey subsequently escaped, but Russell was taken in his study and sent to the Tower. Howard was next seized, and when he had betrayed his friends, Essex and Sidney were arrested. Russell was brought to trial, and although nothing more heinous was brought against him than a design to seize the King's guards in order to check the royal tyranny, Pemberton, the Chief Justice, summed up against him, and he was condemned and executed. Lord Essex committed suicide in the Tower. Algernon Sidney, a cadet of the house of Leicester, and a man of high principle and integrity, was next brought to trial. While he was in theory a Republican, as his

Execution of Russell and of Sidney.

writings prove, nothing was found against him of a treasonable character save the manuscript of his work on government, discovered in his study; but although no living witness besides Lord Howard could be produced to the conspiracy for an insurrection, Jeffreys charged against him in a most unfair and truculent spirit, and this high-souled patriot was found guilty and executed. His tragic end, and his chivalrous character and noble aspirations, have given to the political martyr Sidney a high place in the affections of his countrymen.

Ministerial changes.

Although by the aid of Halifax Charles effected a temporary reconciliation with Monmouth, a more important step was the restoration of the Duke of York to the Privy Council and his appointment as head of the Navy Board. The Duke's leading friend and counsellor was Laurence Hyde, the Tory Earl of Rochester. The Whig Lord Halifax held the Privy Seal, and—with the indifferent assistance of Francis North, Lord Guildford—led the Opposition. Sunderland, Secretary of State, hovered between the two parties. An attack was made upon Rochester for his mismanagement of the Treasury, but he more than retained his position, and became Lord President, while Godolphin was appointed First Lord of the Treasury.

Death of the King.

The last days of Charles were disgraced by the surrender of Tangiers in order to obtain money for the maintenance of his corrupt Court. The King died of apoplexy on February 6th, 1685, and his death was so sudden and unexpected as to give rise in some minds to a suspicion of poisoning.

Parliamentary progress.

While the Parliamentary history of Charles II.'s reign is in many respects unsatisfactory, some clear gains of principle were registered. Notwithstanding such writings as those of Filmer and Hobbes in favour of the dogma of absolute power, all parties admitted that the close union and the mutual control of the Crown and Parliament were necessary. Moreover, while the House of Commons undoubtedly suffered reverses, it was still the

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preponderant element in the Constitution. Many of the instruments of monarchical misgovernment had been discarded, never to be revived. From this time also dates the full and formal recognition of the doctrine that an English jury, in the discharge of their duty, are responsible only to God and their consciences. This principle was decided in the case of a juryman named Bushel, who, at the trial of William Penn and one Mead in 1670 for unlawful assembly, stood firm, and persuaded his fellow-jurors to remain firm, against all the threats of the Court, and to acquit the accused. The Recorder fined the jurors forty marks each for contumacy. Bushel refused to pay, and was imprisoned. A writ of habeas corpus was sued out, and Chief Justice Vaughan, after elaborate arguments, pronounced the fine and imprisonment illegal. Bushel's case stands out brilliantly amid the many infamous State trials of this period.

Trial by Jury.

Constitutional questions.

The whole of Charles's action, both in law and Parliament, was intended to curtail the privileges of the subject and to minimise the power of the House of Commons. Political writings were checked by the judges ; and there were some instances, though not many, of illegal proclamations on the part of the King. The Habeas Corpus Act was the greatest popular achievement of the reign, both from the individual and the Parliamentary standpoint. Differences arose between the Lords and the Commons on questions of jurisdiction, in which the latter were generally successful in asserting their rights ; and after a prolonged contest in the case of Skinner and the East India Company, the constitutional victory practically remained with the Lower House. "From this time," observes Hallam, "the Lords tacitly abandoned all pretensions to an original jurisdiction in civil suits." In appeals from courts of equity, however, the peers continued to exercise a general jurisdiction.

The Houses of Parliament.

With regard to the constitution of the two Houses of Parliament, the augmentation of the temporal peers had been such that, whereas in the Parliament of 1454 only

fifty-three noblemen had appeared, to the Parliament of 1661 no fewer than 139 were summoned. The peers had also during the same period been gradually asserting various privileges, not the least being those of recording their dissent in the journals of the House, and subsequently of adding the grounds of their dissent, the latter of which assumed definite shape in the Long Parliament. The number of members of the House of Commons varied considerably, but there were 111 towns (including London) which from the accession of Henry VIII. had uninterruptedly returned 224 members. In Charles II.'s time there were several divisions in which nearly 400 members took part. To that King's second Parliament 142 peers were summoned, and 507 commoners.

Attitude of the Commons.

Charles's reign witnessed a striking change in the attitude of Parliament. The Commons began in subserviency, and ended by asserting their independence. Legislation also was of a legal and Parliamentary character, and, with the exception of one still-born ordinance against coffee-houses, no attempts were made at extraordinary legislation by King and Council. The executive was mostly kept within its legitimate bounds, and such matters as the control of the administration and the right of impeachment were held tenaciously by Parliament.

Character of the reign.

Yet, with all these advantages of a normal constitutional government, England was actually ruled in a worse manner by Charles than by many of his predecessors. Though to some extent able and dexterous, this king was false, frivolous, and immoral, and he had not an iota of appreciation of the dignity and usefulness of the English constitutional system. He dishonoured the Church, degraded the peerage, and insulted the nation by playing fast and loose with its Parliamentary representation.[1] The hereditary nature of the Crown was his sheet anchor, and he manifested to the full the old Stuart

[1] These points will be found further illustrated in Gneist's *History of the English Constitution*, Chap. XL.

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idea that no man or body of men had a right to inquire into the conduct of the King, or to condemn it, however arbitrary. Such a course of procedure could only precipitate the conclusion of the struggle between the monarchical and the Parliamentary principles of government, which, begun in the days of the First James, was to result in the expulsion of the Second.

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